

PLANNING COMMISSION MINUTES
December 5, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0036

Request: Change in zoning from R-4, single-family & OR-3, office-residential to C-2, commercial with detailed plan and variance(s)

Project Name: Commerce Crossings Retail

Location: 5210 Commerce Crossings Drive

Owner: Elda Acquisition, LLC

Applicant: Capstone Realty, Inc.

Representative: Dinsmore & Shohl, LLP

Jurisdiction: Louisville Metro

Council District: 24 – Madonna Flood

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:

03:02:39 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

03:06:34 Commissioner Brown asked if the applicant is exceeding the maximum setback on Old Preston to accommodate a future connection to the abutting properties? Mr. Dock said yes, that's correct.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore and Shohl, 101 South 5th Street, Suite 2500, Louisville, Ky. 40202

Summary of testimony of those in favor:

03:07:47 Mr. Ashburner gave a power point presentation. This and the previous case are attempts to add to the employment and business center of Commerce Crossings.

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Mr. Ashburner agrees with the staff's analysis and the proposed binding elements. This is not a maxed out development. It's designed to mirror the current developments across the street (Office Commercial). It's a contemporary building but similar in scale and uses.

Deliberation

03:12:35 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 OR-3 and R-4 to C-2

On a motion by Commissioner Howard, seconded by Commissioner Brown, the following resolution based on the Plan 2040 Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, while the proposed rezoning will result in the conversion of residential zoning to commercial zoning, the southern limits of the commercial boundary is in line with the southern limits the office and workplace form district boundaries to the immediate west. Mitigation, such as landscape buffers and building setback, to reduce the impacts of non-res development abutting residentially zoned property will be provided; the subject site is located where demand and adequate infrastructure exists as the site is at the intersection of a local industrial roadway and major arterial roadway with immediate access to I-265; the proposed development is split between NFD and SW form districts and is appropriately located for its intensity and density to provide supportive service to the surrounding population as well as employees within the employment center of the workplace district; The proposed zoning district does not permit the siting of hazardous uses; the proposed zoning district does not permit uses with significant impacts on human health beyond emissions that will be ordinarily expected by customer interaction and vehicle use; the subject site is located at the intersection of a local industrial road and arterial roadway. Expected traffic would not appear to have significant impacts on adjacent residential areas; the proposed district does not permit uses that result in significant adverse impacts from noise and where noise is expected is away from residences; the proposed district does not allow for hazardous use that negatively impact public health, safety, or welfare; and

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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 scale and design to provided supportive use to the employment center and additional retail options for nearby populations. Infrastructure is sufficient to support a wide variety of uses; the subject site provides appropriate connections to adjacent roadway. Connectivity to Old Preston Highway has a minimal impact on the local roadway classification as the vehicular movement would immediately connect vehicles to an arterial roadway; the proposed district locates retail commercial development in an activity center where sufficient population exists and is anticipated to support it; the proposed district results in an efficient land use pattern which concentrates non-residential activity within a non-residential activity center adjacent or within proximity to similar and higher intensity districts; the proposed district encourages a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place; the proposed district will result in development that is in scale with adjacent development and provides additional supportive services to nearby residents and employees; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the subject site does not appear to contain sensitive environmental features; the subject property does not appear to contain wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists; the subject site does not appear to impact the vulnerable environmental features or flood-prone areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the subject site does not appear to contain buildings, sites, districts and landscapes that are recognized as having historic or architectural value. The proposed district is compatible with the intensity of development in the area; tree canopy will be provided as required by the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed development is split between workplace and neighborhood form districts adjacent to the marketplace corridor. It would appear that the zoning proposed is appropriately located near activity centers, employment centers, and public transportation systems (TARC route 45X); and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the proposed districts is

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through areas of similar intensity and no significant nuisances will be created on nearby residential neighborhoods; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed activity is located in an area of compatible land uses that are isolated from service or retail oriented activity centers. The proposed district increases the types of uses that may serve employees or provide supportive services to the industrial area; the proposal is easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the subject site provides all pedestrian amenities and is located near transit corridors; the proposal has a limited impact on the transportation network; the developer will bear or share in rough proportionality the costs of transportation facilities and services made necessary by development; the developer will make all necessary improvement to the transportation network required of their development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the development appears to be 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 available; preliminary approval has been received from MSD; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposed district is located partially within a workplace form district; however, the district does not occupy land that should be reserved for industrial development. Rather, it provides supportive services to the industrial employment nearby; the proposed district is along an arterial roadway within proximity to I-265. Nuisances will not be created as abutting roadways are intended to serve the proposed district; the proposed district is located partially within a workplace form district; however, the district does not occupy land that should be reserved for industrial development. Rather, it provides supportive services to the industrial employment nearby; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, preliminary approval has been received from MSD; the site does not appear to be within the floodplain. Further, the storage or treatment of hazardous uses is not permitted within the proposed district.

COMMUNITY FORM

The proposal complies with the intent and applicable policies of the Community Form

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Plan Element. The subject property is located in the Suburban Workplace Form District, which the Comprehensive Plan states is a form "characterized by predominantly industrial and office uses where the buildings are set back from the street in a landscaped setting." Here, the proposal is consistent with the Suburban Workplace FODn District as it will provide for smaller scale office/retail opportunities to complement the existing Commerce Crossings business park. The proposed development will observe the Suburban Workplace form in much the same way as the office building across Commerce Crossings Drive. The proposal is compatible with the scale and site design of the surrounding properties. The proposal is surrounded by a large office on the west, a small office center on the north, Preston Highway on the east and a single family residence to the south. The proposed development will provide buffering as required in the Land Development Code to prevent adverse impacts on adjacent properties. The proposal will add to the mixture of uses available in the Commerce Crossings business park and will be at a scale to serve both the workers in Commerce Crossings and the residents in nearby neighborhoods.

MOBILITY

The proposed development complies with the intent and applicable policies of the Mobility Plan Element. The proposed development will be accessed via both Commerce Crossings Drive and Old Preston Highway. The proposed development is near other activity centers along Preston Highway as well as Interstate 265. The proposed development will share access with the office use to the west. The proposed development will also contain sidewalks along both street frontages.

COMMUNITY FACILITIES

The proposed development complies with the intent and applicable policies of the Community Facilities Plan Element. The subject property is adequately served by all utilities, including water and sewer.

ECONOMIC DEVELOPMENT

The proposed development complies with the intent and applicable policies of the Economic Development Plan Element. The proposed development is designed to serve the needs of the larger Commerce Crossings business park and nearby residential areas. Allowing workers an option for lunch, a medical office visit or other daily need within Commerce Crossings should prove to be an asset for both the workers and others in the area.

LIVABILITY

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The proposed development complies with the intent and applicable policies of the Livability Plan Element. The proposed development will accommodate both the new and through drainage as required by MSD. The proposed development is also designed to give the workers within Commerce Crossings and residents of surrounding neighborhoods access to the property via sidewalk, reducing vehicle miles traveled. The proposed development will comply with the tree canopy sections of the LDC.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential and OR-3, Office Residential to C-2, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Howard, Mims, Peterson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes, Carlson and Lewis

1. Variance of Land Development Code, section 5.3.1.C.5 to reduce the non-residential to residential setback along the west property line from 30' to 20'

WHEREAS, the requested variance will not adversely affect public health, safety, or welfare as the adjacent development is developed for non-residential purposes and the minimum landscape buffer will be provided; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the adjacent development is developed for non-residential purposes and the minimum landscape buffer will be provided; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the adjacent development is developed for non-residential purposes and the minimum landscape buffer will be provided; and The requested variance will not allow an unreasonable circumvention of zoning regulations as the requirement calls for a non-residential to residential setback and because of the nature of the zoning district the setback is required, but the site is developed for non-residential uses; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the requirement calls for a non-residential to residential setback and because of the nature of the zoning district the setback is required, but the site is developed for non-residential uses; and

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WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the requirement calls for a non-residential to residential setback and because of the nature of the zoning district the setback is required, but the site is developed for non-residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land for the reasons previously stated in these findings; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought.

2. Variance of Land Development Code, section 5.3.1.C.5 to increase the maximum setback along Old Preston Highway from 80' to 190'

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

WHEREAS, the requested variance will not adversely affect public health, safety, or welfare as the proposed setback is consistent with the workplace form to which the site is oriented to serve; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the proposed setback is consistent with the workplace form to which the site is oriented to serve; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the proposed setback does not impede the safe movement of pedestrians or vehicles; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the proposed setback is consistent with the workplace form to which the site is oriented to serve; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is split between two form districts; and

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WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land for the reasons previously stated in these findings; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance of the Land Development Code, section 5.3.1.C.5 to reduce the non-residential to residential setback along the west property line from 30 feet to 20 feet and a variance of Land Development Code, section 5.3.1.C.5 to increase the maximum setback along Old Preston Highway from 80 feet to 190 feet.

The vote was as follows:

YES: Commissioners Brown, Howard, Mims, Peterson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes, Carlson and Lewis

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Howard, seconded by Commissioner Brown, the following resolution based on the Standard of Review and Staff Analysis and it meets the Land Development Code regulations with approval of the variances was adopted.

WHEREAS, the development plan does not significantly impact natural resources on the property and all tree canopies, landscaping buffering, and open space is provided; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided as pedestrian connections and internal parking lot connectivity is provided; and

WHEREAS, sufficient open space is provided in tree canopy, landscaping buffering, and open space; 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

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WHEREAS, the Louisville Metro Planning Commission finds, the proposal is generally compatible within the scale and site design of nearby existing development and with the Workplace form district's pattern of development as the proposed development is consistent with existing development; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040. The subject site is located where demand and adequate infrastructure exists as the site is at the intersection of a local industrial roadway and major arterial roadway with immediate access to I-265.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

The development shall be subject to all applicable binding elements of the general plan, docket 9-32-97, as well as the following:

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:
 - a. The development plan must receive full construction approval from Develop Louisville, 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 requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
 - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 5, 2019 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.

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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. 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. The developer and/or property owner shall provide a cross over access agreement or private access easement to the property to the south if it is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

The vote was as follows:

YES: Commissioners Brown, Howard, Mims, Peterson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes, Carlson and Lewis