

PLANNING COMMISSION MINUTES
December 1, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0125

Request:	Change in zoning from R-4, OR-3, & PEC to R-6, OR-3, & PEC with detailed development plan, major subdivision plan, and variances
Project Name:	Commerce Crossings II
Location:	9710 Preston Highway; 9900 Cooper Church Dr; 5115, 5121 & 5141 Commerce Crossings Dr; 9701 Cooper Church Drive
Owner:	Commerce Crossings, LLC; Alvin J Slack, Jr.;
Applicant:	Capstone Realty
Representative:	Dinsmore – Cliff Ashburner
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox; 24 – Madonna Flood
Case Manager:	Joel P. Dock, AICP, Planning Coordinator

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:

02:01:44 Joel Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

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

Gabe Mulnar, 11601 Main Street, Louisville, Ky. 40243

Mark Madison, Milestone Design Group, 108 Daventry Lane, Suite 300, Louisville, Ky. 40223

Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059

Summary of testimony of those in favor:

02:13:24 Cliff Ashburner introduced the other applicant representatives and discussed the plan (see recording for detailed presentation).

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02:17:19 Gabe Mulnar discussed the following: background information on Capstone Realty; business parks; curb and gutters; proposal architecturally appealing; designed to be affordable to people who work in business park; and the proposal will bring long-term value to the community (see recording for detailed presentation).

02:21:20 Cliff Ashburner discussed the following: plan has evolved significantly between August 2021 and today; trying to minimize areas in stream buffer; connectivity that affects apartments; access is where it needs to be; preserving existing trees; variances are adequately justified; and elevations/design (see recording for detailed presentation).

02:29:12 Mark Madison discussed the following: buffering along the common property lines; 25-foot no disturb area; lot of green space to do grading and utility work; landscape and screening will comply with the Land Development Code; at the end of the building there is no truck loading; and large distance from homes (see recording for detailed presentation).

02:32:44 Cliff Ashburner showed some elevations (see recording for detailed presentation).

02:34:47 Diane Zimmerman explained the Traffic Impact Study (see recording for detailed presentation).

02:36:21 Cliff Ashburner said there was a request to provide additional emergency access from the private access drive. The Okolona Fire Dept. has approved the access and gate (see recording for detailed presentation).

02:46:53 Joel Dock read the following proposed additional binding element into the record: The first 25-feet of setback from the property line in the area of lot 1 and extending to the open space lot 6 shall not be disturbed. All required landscaping and screening shall be provided outside of this first 25-feet and within the development site. Cliff Ashburner said they will have to disturb that 25-foot area to install piping as required by MSD. Joel Dock added, 'except as necessary for MSD installation'. Also, McCray Ln. will be handled on condition that the plan is revised to show the gated access as presented at today's public hearing.

Deliberation

02:52:54 Planning Commission deliberation.

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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, OR-3, & PEC to R-6, OR-3, & PEC

On a motion by Commissioner Carlson, seconded by Commissioner Price, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed zoning district does not expand non-residential uses into residential areas as the site is vacant and located within the suburban workplace form district which is a form characterized by predominately industrial and office uses, and the proposed zoning district supports the intended pattern of development; the proposed district is appropriately located within the SW form where demand and infrastructure are in place to support industrial growth within the form; the proposal is in a workplace form readily served by infrastructure and capable of being served by transit. An isolated center is not being created. The district extends the existing employment center known as Commerce Crossings; the proposed PEC district limits potential industrial uses at the M-2 intensity level which eliminates some of the more noxious and offensive uses. Disadvantaged or historically marginalized communities will not be disproportionately impacted; primary access to the site will be obtained through areas of similar intensity and from major roadways and transit corridors; the proposed zoning district does not allow for M-3 uses which might introduce noxious uses on the fringe of the workplace form where residents are located nearby; the proposed zoning district does not allow for M-3 uses which might introduce noxious uses on the fringe of the workplace form where residents are located nearby. Any hazardous use defined by the LDC will require a conditional use permit, if allowed in the PEC district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed districts have been appropriately located in the workplace form and in areas where density and intensity are supported given the application of required buffers; the zoning district proposed occupy most of the land while also preserving historic resources as residential to ensure continue protection; the PEC district allows for a variety of office and employment uses that support the appropriate growth of the existing employment center known as Commerce Crossings; the proposed residential district is appropriately located in an area of employment and commercial activity capable of being served by

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transit and continues a pattern of development that is present to the north on Cooper Church Road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, natural features on the site will be conserved. While encroachments into buffers result, the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. The historic resources on the subject property will be reviewed, documented, and protected, while also developing the land; features, including sinkholes and flood prone areas have been reviewed and documented. Louisville MSD has approved the preliminary plan and will review all construction plans prior to development to minimize negative development impact on water courses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, historic resources will be preserved in the existing residential zoning district. Documentation of resources will be required prior to disturbance. Natural elements will be maintained while also accommodating development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center. Housing is located nearby and pedestrian access is available from these areas; the Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center. Heavy trucks will not be able to traverse through residential neighborhoods as no vehicular connection is available to allow for such movement; the costs of transportation facilities and services made necessary by development will be the responsibility of the applicant; transportation facilities and services are adequate to serve the development; all improvements necessary will occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, utilities to serve the development would appear to be available based on existing development; an adequate supply of potable water and water for fire-fighting purposes appears to be available or

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will be made available by the development; the development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposal provides industrial land uses to take advantage of an existing location of a business park which is supported by nearby populations and activity; access will be from a local roadway serving industrial users that immediately connects with a major arterial roadway; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, natural features on the site will be conserved. While encroachments into buffers result, the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. An analysis of karst terrain is included in the record of this case and all development must proceed in accordance with applicable standards; preliminary MSD review and approval has been given by Louisville MSD; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed multi-family rezoning promotes environments to support aging in place in area where individuals may transition from single-family living to multi-family living near activity centers; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the multi-family district is a continuation of the existing development to the immediate north and connectivity is provided and extended to Commerce Crossing Drive; the proposal is in an area of activity where multi-modal transit is present or capable of being provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, no displacement will occur as a result of this development and much more housing will be provided as a result of the proposed district; the R-6 district allows for clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.

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, OR-3, Office Residential and PEC, Planned Employment Center to

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R-6, Multi-family Residential, OR-3, Office Residential and PEC, Planned Employment Center on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Cheek, Clare, Mims, Pennix, Price, Sistrunk and Howard

NO: Commissioner Brown

NOT PRESENT AND NOT VOTING: Commissioner Lewis

On a motion by Commissioner Carlson, seconded by Commissioner Price, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

Variances:

Variances from Land Development Code (LDC), Section 4.8 to allow encroachments into the protected waterway at 4 locations throughout the development and reduce the waterways to the following dimensions:

- 1. 100' to 65' (labeled on development plan with 'V1' – lot 4)**
- 2. 100' to 65' ('V2' – road encroachment between lots 3 & 5)**
- 3. 100' to 54' ('V3 – lot 2)**
- 4. 100' to 68' ('V4 – lot 1)**

WHEREAS, the requested variances will not adversely affect public health, safety or welfare as encroachments being made allow for proper access and circulation (V1/V2) or are in areas where there will also be disturbance related to floodplain compensation or sanitary sewer lines/easements (V3/V4). The encroachment does not impede the flow of water or any potential use of the waterway. Appropriate crossings will be made; and

WHEREAS, the requested variances will not alter the essential character of the general vicinity as the intended form of this area is for employment and industrial uses which are accommodating the waterway and historic resources on the subject property while also developing the land; and

WHEREAS, the requested variances will not cause a hazard or nuisance to the public as the waterways are maintained on private property. Louisville MSD, KDOW and ACOE will be required to approve all construction plans prior to development to ensure water quality in compliance with applicable standards of each reviewing agency; and

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WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations; and

WHEREAS, the granting of the variances does not represent an extreme hardship such that minimal or no reasonable economic use of the land is unavailable. Except for the variance for the roadway encroaching into the buffer between lots 3 & 5, each of the variances could otherwise be avoided by reducing or reconfiguring the development on each site; and

WHEREAS, the encroachments are the minimum necessary to accommodate the development as specifically proposed by the applicant; and

WHEREAS, the Louisville Metro Planning Commission finds, the applicant shall be required to comply with the standards of the Land Development Code as it relates to restoration (4.8.6.K), water quality monitoring (4.8.6.L), and tree and vegetation removal (4.8.6.M); and

WHEREAS, the Louisville Metro Planning Commission further finds Louisville MSD, KDOW and ACOE will be required to approve all construction plans prior to development to ensure water quality in compliance with applicable standards of each reviewing agency.

Variances from LDC, Section 5.3.4.D.2 (Table 5.3.1) to allow for the height of buildings at the street side to exceed the maximum height of 35' ('V5' & 'V6'), a variance of 6-feet for a maximum height of 41-feet

WHEREAS, the requested variances will not adversely affect public health, safety or welfare as the height does not impede the safe movement of pedestrians or vehicles; and

WHEREAS, the requested variances will not alter the essential character of the general vicinity as the height proposed is the result of topographical changes that place the height on the street side above the maximum. The development is a continuation of the pattern of development that is present to the immediate north of the subject site; and

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

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal does not cause a hazard or nuisance or result in adverse impacts to public health, safety, or welfare; 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 height proposed is the result of topographical changes that place the height on the street side above the maximum; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified; 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 no development has occurred.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the following variances: Variances from Land Development Code (LDC), Section 4.8 to allow encroachments into the protected waterway at 4 locations throughout the development and reduce the waterways to the following dimensions:

1. 100' to 65' (labeled on development plan with 'V1' – lot 4)
2. 100' to 65' ('V2' – road encroachment between lots 3 & 5)
3. 100' to 54' ('V3 – lot 2)
4. 100' to 68' ('V4 – lot 1)

Variances from LDC, Section 5.3.4.D.2 (Table 5.3.1) to allow for the height of buildings at the street side to exceed the maximum height of 35' ('V5' & 'V6'), a variance of 6-feet for a maximum height of 41-feet.

The vote was as follows:

YES: Commissioners Carlson, Cheek, Clare, Mims, Pennix, Price, Sistrunk and Howard

NO: Commissioner Brown

NOT PRESENT AND NOT VOTING: Commissioner Lewis

Revised/Detailed & District Development/Major Preliminary Subdivision Plan with review of stream crossings in accordance with LDC 4.8.6.J

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On a motion by Commissioner Carlson, seconded by Commissioner Price, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, 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 will be provided. While encroachments into buffers are being made, the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. The historic resources on the subject property will be reviewed, documented, and protected, while also developing the land. Two roadways perpendicularly cross protected waterways to provide necessary access with the least disturbance possible from necessary construction activity to accommodate the proposal. The applicant will be required to restore any disturbance of the Buffer Area and protected waterway by re-grading and re-vegetation in the areas of the crossings. Binding Elements have been included to ensure that historic and environmental resources are properly documented, conserved, and restored as required by the Land Development Code; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided. The roads within the development are private roadways. Sidewalks and connections for pedestrians are provided throughout. The Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center; and

WHEREAS, open space to meet the needs of the development is provided; 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 to prevent drainage problems from occurring on the subject site or within the community. Louisville MSD, KDOW and ACOE will be required to approve all construction plans prior to development to ensure water quality in compliance with applicable standards of each reviewing agency; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposed development is compatible with the intended development pattern of the form district. No variances or waivers have been requested to relief standards that reduce setbacks or buffers adjacent to residential uses or increase the height of industrial development adjacent to residential; and

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WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised/Detailed & District Development/Major Preliminary Subdivision Plan with review of stream crossings in accordance with LDC 4.8.6.J **ON CONDITION** that the plan be revised to show the emergency access gate and road as described by the letter from the fire department November 30, 2022 and that the gate be operated as approved by the Okolona Fire Dept. and Louisville Metro Police, **SUBJECT** to the following Binding Elements:

1. Unless developed in strict compliance with the detailed development as shown on the approved detailed district development plan, the applicant, developer, or property owner shall obtain approval of a revised detailed district development plan and rendering for each site or phase of this project in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - d. A subdivision plat (major or minor) creating the lots and private access easements as shown on the approved district development plan shall be recorded prior to issuance of any building permits.

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e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 1, 2022 Planning Commission hearing. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.

f. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.

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

6. 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.

7. In coordination with the Department of Public Works' Division of Transportation, Greenways and Trails Office, the applicant, developer, or property owner shall be responsible for construction of the Louisville Loop through the subject site beginning at Maynard Drive and continuing within the proposed and existing right-of-way to the intersection of Cooper Church and Commerce Crossing Drives as shown on the approved development plan.

8. A minimum 30' access easement in a form acceptable to the Planning Commission legal counsel shall be created for the Louisville Loop as shown on the approved development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.

9. A minimum of 21% of the existing tree canopy coverage (existing: 463,931 sq. ft.) shall be preserved on lot 4 of the development plan. Tree canopy to be preserved shall be demonstrated on the Tree Preservation Plan and shall be substantially similar to the exhibit dated "received February 7, 2022".

10. The applicant shall obtain the services of an engineer (geotechnical engineer) licensed in the State of Kentucky with experience in the review and analysis of karst geologic features practicing in accordance with KRS 322 to conduct a geological assessment report to recommend treatment and construction method for construction of impervious surfaces within sinkholes and over karst springs. The report shall be provided for approval by the Planning Director or designee.

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11. The applicant shall restore any disturbance of the Buffer Area and protected waterway resulting from stream crossings regulated by the LDC by re-grading and re-vegetation in accordance with the restoration standards for protected waterways (Land Development Code Section 4.8.6.k). The following shall also apply:

- a. Provisions for restoration of the disturbed area shall be included in any development or subdivision agreement for the project, with adequate security to guarantee that the restoration will be completed.
- b. Construction plans shall identify the alignment of the crossing, the proposed construction techniques, the proposed construction and working easements, and mobilization, staging and temporary disposal areas.

12. An updated Kentucky Historic Properties Survey Form, which shall be completed by a Secretary of the Interior-qualified professional, shall be completed prior to site disturbance. A copy of said report shall be provided to Planning and Design Services and Landmarks Commission.

13. During development, archaeological discoveries such as artifacts, features, and other archaeological deposits shall be reported to the Landmarks Commission. Examples include Native American spear points and tools, historic objects, historic trash pits/dumps, privies (outhouse pits), cisterns, wells, and foundations.

14. The inactive cemetery on Lot 7 shall be preserved and maintained as described in Section 4.4.6 of the Land Development Code. A minimum 30' access easement in a form acceptable to the Planning Commission legal counsel shall be created to preserve access from the public road to the cemetery as shown on the approved development plan. A deed restriction in a form approved by the Planning Commission legal counsel shall be recorded acknowledging the location, site, ownership and maintenance of the cemetery.

15. In addition to those binding elements listed above, the general district development plan binding elements of docket 9-32-97 (Commerce Crossing I) are applicable to lot 5 and the open space area between lot 5 and 4, along with the office area of lot 4 along Commerce Crossing Drive.

16. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.

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17. The first 25' of setback from the property line on the exterior of the development site on lot 1 and continuing along the boundary to open space lot 6 shall be left undisturbed, except where utility installation or improvements are required. All landscaping required shall be provided outside of this area and within the development site.

The vote was as follows:

YES: Commissioners Carlson, Cheek, Clare, Mims, Pennix, Price, Sistrunk and Howard

NO: Commissioner Brown

NOT PRESENT AND NOT VOTING: Commissioner Lewis