

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

Request: Revised District Development Plan with Binding Element Amendments
Project Name: Norton Audobon Medical Office
Location: 3101 Poplar Level Road
Owner: Andrew M. McCarthy, J.D.
Applicant: Andrew M. McCarthy, J.D.
Representative: Chris Brown, AICP, BTM Engineering Inc.
Jurisdiction: Louisville Metro
Council District: 10 – Pat Mulvihill
Case Manager: Lacey Gabbard, AICP, Planner I

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:

02:17:22 Ms. Gabbard discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Chris Brown, BTM Engineering, Inc., 3001 Taylor Springs Drive, Louisville, Ky. 40220

Summary of testimony of those in favor:

02:24:48 Mr. Brown gave a power point presentation. The proposed plan will change the use from grocery store to medical office complex. Binding element (15 and 16) related to the use is required to be approved by Metro Council. The building façade will change.

02:37:21 Commissioner Brown asked if they're removing the pedestrian connection to Audubon Plaza Dr. Mr. Chris Brown said they're removing a small piece of sidewalk at the rear behind the dumpster that goes out to Illinois Ave. Pedestrians coming into the site will still be accommodated. Commissioner Brown said there is no connection being proposed to Audubon Plaza Dr. Mr. Chris Brown said there's a sidewalk on the western portion that comes out on the east side of the parking garage to Audubon Plaza Dr. Commissioner Brown asked if there's an easement. Mr. Chris Brown said he would have to check on it. Commissioner Brown said there are 3 different property owners and he wouldn't consider approving this case without knowing if an easement exists or not. It must meet the requirements of the Land Development Code, LDC.

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

02:45:24 Ms. Ferguson stated, it looks like on the plan to the left, that the section that leads out to Audubon Plaza Dr. is also subject to a variable width private access easement. Commissioner Brown said there's no guarantee that sidewalk will always be there for future connectivity. Mr. Chris Brown said the sidewalk in the Woodland Protection Area, WPA will remain and it's not encouraging or directing pedestrian traffic in a defined way into the rear of the site. Commissioner Brown stated the LDC requires that you provide ADA compliant pedestrian connection to all the abutting public roadways.

02:56:20 Mr. Chris Brown stated, regarding the existing sidewalk to be removed, some of the remaining portion will cut across and there is a walkway shown along the parking island and goes to the front entry point.

02:57:46 Mr. Chris Brown said this issue did not come up (with any agencies) during the review of the development plan. Commissioner Brown said if they eliminate the proposed parking and the sidewalk removal, the plan will be in order.

Deliberation

03:02:42 The commissioners are in agreement that this case is a good change of use and don't want it held up. The easement needs to be put in place.

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.

03:24:11

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that Binding Element Amendments 1, 3, 6a-e, 7a-c, 15 and 16 be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Daniels, Howard, Mims, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

Revised District Development Plan and Binding Elements

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution was adopted.

WHEREAS, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. Public Works and MSD have provided preliminary approvals; and

WHEREAS, there are no Outdoor Amenity Area requirements with this proposal; 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan and Binding Element Amendments to numbers 4, 5, 9, 10, 18 and 24, **ON CONDITION** that it meets the pedestrian access requirements as specified in the Land Development Code and **SUBJECT** to the following Binding Elements:

All binding elements from the approved General Development Plan are applicable to this site, in addition to 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

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

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 authorized Committee thereof; any changes/additions/alterations not so referred shall not be valid.

2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - f. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - g. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - h. 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.
 - i. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - j. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

7. 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, an assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and Metro Council approval.
9. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed of restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:
 - (c) Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which all existing vegetation shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat, except that the gazebo required by these binding elements may be constructed within the WPA and a walking path may be installed in the WPA in a location agreeable to the applicant and approved by Planning and Design Services staff.
 - (d) Dimension lines have been used on this plan to establish the general location of WPAs and represent the minimum boundary of the designated WPAs. The final boundary for each WPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
10. The materials and design of proposed structures shall be substantially the same as depicted in the renderings as presented at the February 17, 2005 and March 17, 2005 Planning Commission meetings. The materials and design of the

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

proposed grocery shall be masonry and designed to have the appearance of brick similar to that of the grocery located on Thierman Lane in St Matthews. This binding element may be amended only with the approval of Metro Council.

11. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval. This binding element may be amended only with the approval of Metro Council.
12. No overnight idling of trucks shall be permitted on site. This binding element may be amended only with the approval of Metro Council.
13. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
14. Skylights. The roof of the building shall have no skylights.
15. Outdoor activity. No loading, trash pickup (i.e. dumpster loading and unloading, pallet or trash removal from the site), trash compacting audible beyond the property line, outdoor construction or maintenance, parking lot cleaning or sweeping (except snow and ice), shall occur on the property between the hours of 7 PM and 7 AM. This binding element may be amended only with the approval of Metro Council.
16. Deliveries. No deliveries shall be made to or on the site or drive-thru window operation shall be made between the hours of 10 PM and 6 AM.
17. Delivery Truck Parking On-Site. No delivery trucks with lights, engines, refrigerator motors or similar equipment in operation shall be allowed to park on the property between the hours of 10 PM and 7 AM. The property owner or store operator shall post signs to this effect. This binding element may be amended only with the approval of Metro Council.
18. Alarms. Provided no applicable law or regulation otherwise requires, no security alarms, sirens or bells shall be located on the exterior of the building. However, it is permissible for an alarm system to be operated in conjunction with exit doors.
19. No blasting shall occur on the site unless approved by the Land Development and Transportation Committee after notice to those individuals who spoke at the public hearing. This binding element may be amended only with the approval of Metro Council.

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

20. Prior to commencing site disturbance work the developer shall contract with an archaeologist to perform an archaeological survey report and shall provide a copy of the survey report to the Urban Design Division ("Landmarks") of Louisville Metro Planning and Design Services. Within thirty days following delivery of the survey report to Landmarks, the developer and Landmarks shall meet to review the findings of the survey report and to agree upon what action, if any, should be taken. This binding element may be amended only with the approval of Metro Council.

21. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan. All plans setting out tree preservation areas must contain the following notes:
 6. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.
 7. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
 8. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both TPAs and WPAs, fencing shall only be required at the outer most perimeter of that tree mass.
 9. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
 10. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.

22. First flush stormwater runoff for the site is to be funneled into storm ceptors, settling/retention basins, and/or oil/water separators as needed so that grit, oil, gas, antifreeze, and other potential toxic substances are captured before entering the detention basin. MSD is to approve both the details of capturing the first flush material and the details of the maintenance plan for the ceptors, basins, and/or oil/water separators. The property owner is responsible for proper maintenance of the storm ceptors, basins, and/or oil/water separators as per MSD's approved maintenance plan and is to provide MSD with documentation of such maintenance ensuring that the maintenance plan is properly followed.
23. Prior to issuance of a construction permit the developer shall obtain approval of the development plan from the U.S. Army Corps of Engineers. 24. Access from Audobon Plaza Drive shall be designed so as to restrict access by delivery trucks, which design shall initially include placement of bollards at appropriate locations. The Planning Commissioner shall have the right to require additional restrictions at a later date should the placement of bollards be unsuccessful in restricting delivery truck access. This binding element may be amended only with the approval of Metro Council. 25. Exterior improvements to the VFW building shall be made similar to those presented at the March 17, 2005 public hearing so as to integrate its design with the design of the proposed structures in the center.
26. Although the approved Development Plan indicates an on-site detention basin, the developer agrees to continue to pursue the concept of an off-site basin or downstream improvement suitable to MSD, with the intent of balancing the issues of tree preservation and acceptable stormwater management.
27. The design of the fencing along the easterly portion of the property shall be presented at the March 17, 2005 public hearing. In addition, the landscaping along the fencing shall be evergreens at least 6 feet in height and irrigation shall be installed in connection with the landscaping. This binding element may be amended only with the approval of Metro Council.
28. The developer/applicant/property owner shall plant large shade trees on the subject property approximately 50 feet on center along the entire Poplar Level Road frontage. Said trees shall be a minimum 3 inches in caliper at time of planting. A landscape plan that conforms to this binding element and Chapter 10 of the LDC shall be approved by Planning and Design Services staff prior to

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-DDP-0040

requesting any permits, in accordance with Binding Element No. 9. This binding element may be amended only with the approval of Metro Council.

29. The developer/applicant/property owner shall install a "Bright Side" on Poplar Level Road somewhere along the frontage of the subject property if approved by the State Highway Department. This binding element may be amended only with the approval of Metro Council.
30. The developer/applicant/property owner shall donate the property within the designated Woodland Protection Area along Illinois Avenue to Metro Government at such time as Metro Government indicates that it will accept the donation. This binding element may be amended only with the approval of Metro Council.
31. The developer/applicant/property owner shall construct/install a gazebo on the northeast portion of the site along Illinois Avenue similar in size to the gazebo at Willow Park; the cost of said gazebo is not required to exceed \$5,000. The exact location of the gazebo shall be approved by Planning and Design Services staff. This binding element may be amended only with the approval of Metro Council.

The vote was as follows:

YES: Commissioners Brown, Daniels, Howard, Mims, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe