

PLANNING COMMISSION MINUTES
June 6, 2019

PUBLIC HEARING

CASE NO. 19ZONE1011

Request: Change in zoning from C-1 to C-2 with associated Detailed District Development Plan with Binding Elements and removal of General Plan Binding Elements

Project Name: Townfair Center Rezoning

Location: 1915 South Hurstbourne Parkway

Owner: Hurstbourne Townfair Station LLC

Applicant: Hurstbourne Townfair Station LLC

Representative: Nick Pregliasco - Bardenwerper Talbott & Roberts PLLC

Jurisdiction: Louisville Metro

Council District: 18 – Marilyn Parker

Case Manager: Dante St. Germain, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:18:02 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in support of this request:

Nick Pregliasco, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway 2nd Floor, Louisville, KY 40223

Mike Hill, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Greg Clow (sp), 8289 Houston Lane, Peewee Valley, KY 40056

Summary of testimony of those in support:

02:23:19 Nick Pregliasco, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He discussed some proposed binding elements, both from the applicant and from Mr. Jim Lynch, a nearby resident in opposition.

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The following spoke in opposition to this request:

Jim Lynch, 1903 Hurstbourne Circle, Louisville, KY 40220

Summary of testimony of those in opposition:

02:34:14 Jim Lynch, a nearby resident, spoke in opposition. He said his main concerns are limiting or preventing noise and outdoor speakers; also, limiting or preventing car sales. He said there are already several major car dealerships in this neighborhood. He discussed a list of six potential binding elements which were submitted prior to today's meeting. He asked that no alcohol sales be permitted after 2:00 a.m.

His list of proposed prohibited uses are:

- No dance halls or restaurants where dancing or entertainment or music is allowed outside. No outside speakers.
- No Tavern, Bar, Saloon. No 4:00 a.m. liquor license.
- No Public Passenger Transportation Terminals.
- No boat sales with outside storage.
- No automobile rental agencies, repair agencies, sales agencies (there are already 40 of them on the next street. Swope Car Sales, Bachman Chevy, Volkswagon, Car Max, etc.
- Bingo Halls and Parlors.

02:41:26 Commissioner Carlson, Ms. St. Germain, and Mr. Lynch discussed some of his binding element requests.

02:42:31 Commissioner Robinson and Mr. Lynch discussed the liquor license procedure.

Rebuttal:

02:43:39 Mr. Pregliasco addressed Mr. Lynch's concerns about noise and sight-lines. He said there is no request for a 4:00 a.m. liquor license, and there are no plans for any type of auto dealerships.

02:46:56 Greg Clow (sp), the property owner, discussed some of the possible tenants/types of tenants that could go here under the rezoning. He said all of the activity/s planned will be inside, nothing outside.

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02:48:15 In response to a question from Commissioner Peterson, Mr. Pregliasco said he was okay with the restrictions Mr. Lynch was proposing.

02:48:38 Commissioner Brown is in favor of “binding out” automobile sales, service, rental, storage, etc. He said those uses should not be allowed without a traffic impact study to support them. He said this site is constrained and Hurstbourne Parkway is a very busy roadway. Mr. Pregliasco, Mr. Clow, and Commissioner Brown discussed the possibility of a binding element requiring any auto-centric uses to have a traffic impact study and go to a hearing.

Deliberation:

02:54:38 Commissioners’ deliberation.

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Zoning

02:28:00 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Plan 2040 Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Land Use & Development Goal 1: Community Form** because the subject site is already zoned commercially and the proposed zoning district would increase the potential commercial uses. The proposed zoning district change would not expand the commercial use into a non- residential area; the subject site is located on a transit corridor and a major arterial road. The proposed zoning district is a higher density and intensity district; the proposal is not for industrial zoning; the proposed zoning district change would allow for higher intensity commercial uses than the uses currently allowed. The subject site is not located in a historically disadvantaged area; the proposed commercial zoning would permit higher density and intensity uses than currently permitted under the existing commercial zone. The subject site is not located in an area that is historically disproportionately affected by adverse impacts. Traffic for the uses allowed under the proposed zoning would be similar to the traffic currently generated by the uses allowed by the existing zone. Traffic will be routed to S Hurstbourne Parkway, a major arterial, or Bunsen Parkway, a primary collector; noise

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from the site must comply with Louisville Metro Ordinances; and the proposed zoning district would not permit junkyards, landfills, quarries, or similar uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 2: Community Form** because the proposed zoning district change would allow for an increased intensity of use on the subject site, which is located in an activity center; the subject site is located in an activity center, and is currently being used partially for retail uses. The existing retail uses can be anticipated to continue indefinitely; the proposed zoning district change would increase the intensity of permitted uses on property that is currently already used commercially, resulting in a more compact and efficient land use pattern in an existing activity center; the proposed zoning district change would permit a broader mix of uses than is currently allowed under the existing zone; the proposed zoning district would allow for a mix of residential and retail or office uses; the proposal would reuse existing structures; and the existing development has two outlots developed as restaurants; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 3: Community Form** because no natural features are evident on the subject site; no wet or highly permeable soils, or severe, steep or unstable slopes appear to exist on the subject site; the subject site is not located in the Ohio River Corridor; and the subject site is not located in a flood-prone area or an area vulnerable to sinkholes or landslides; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 4: Community Form** because no historic assets are evident on the subject site; and no landscapes or natural elements are evident on the subject site. The built features as currently exist are proposed to remain; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 1: Mobility** because the proposed zoning district is for a higher density and intensity district. The subject site is located within an existing marketplace corridor, an existing activity center, and an employment center; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 3: Mobility** because the subject site is not located in a neighborhood or village center; the proposed zoning district would allow for a mix of compatible land uses and traffic will be directed down a major arterial road. Housing exists near the existing center; two transit stops are located near the subject site. The existing transit stops will reduce the need for multiple automobile trips; the subject site is near two existing transit stops and sidewalks are available to assist pedestrians and users of transit in utilizing the site; and Transportation Planning has approved the proposal; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Facilities because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Economic Development because the proposal is not for industrial zoning; and the subject site is located on a major arterial street; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Livability because the subject site is located on karst topography. No karst features were located on the site; and the subject site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Housing because the proposed zoning district would allow for residential or commercial development that would support aging in place for nearby residents; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Housing because the proposed zoning district would allow for mixed-income and mixed-use development; and the subject site is located on a major arterial road with two transit stops nearby. The proposed zoning district change would permit high density residential development in the future. The proposed zoning district change would also permit more amenities close to the existing residential neighborhoods abutting the development site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Housing because The subject site is not residential in nature and increasing the intensity of allowed uses would not displaced any existing residents; and the proposed zoning district would allow innovative methods of housing to be developed; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that Change in zoning from C-1 Commercial to C-2 Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Robinson, Peterson, Daniels, Brown, Carlson, and Jarboe.
NOT PRESENT: Commissioners Smith, Lewis, Howard, and Tomes

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03:00:32 Before the binding elements were voted on, Commissioner Brown read the binding elements proposed at today's hearing into the record, as follows:

9. A change of use to auto rental, repair service, or sales shall require a traffic impact study to be reviewed and approved by Develop Louisville. Road improvements and traffic mitigation identified in the traffic impact study shall be constructed prior to the issuance of certificate of occupancy.
10. The site shall not be used for the following uses:
 - a. Public Passenger Transportation Terminals.
 - b. Boat sales with outside storage.
 - c. Bingo Halls and Parlors.

Detailed District Development Plan with Binding Elements

03:01:37 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that 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, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Commission further finds that 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The proposed site plan reuses an existing vacant building for an entertainment complex; and

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WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan with the removal of the existing General Plan Binding Elements, and **SUBJECT** to the following binding elements:

General Plan Binding Elements (proposed to be removed)

- ~~1. Prior to development of each phase of the project, a detailed district development plan shall be submitted to the Planning Commission for approval. The plan shall be in adequate detail for the Commission to assess the impact of the development in the surrounding area. Each development plan shall be subject to additional binding elements.~~
- ~~2. The gross square footage for the portion of the development southwardly of the proposed road bisecting the property shall be 235,685 square feet including no more than 10,785 square feet for out parcels one and two. The total square footage for the portion of the property lying northwardly of the proposed road bisecting the property shall be 146,500 square feet.~~
- ~~3. No additional development or expansion shall take place unless additional parking is provided.~~
- ~~4. Any change in use of the building space shall receive certificate of occupancy permits only if no great deficit in parking is created.~~
- ~~5. Before a building permit is issued:
 - ~~a) The development plan must be reapproved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.~~
 - ~~b) The property owners or developers must obtain approval from the Planning Commission, in business session, of a screening, buffering and landscaping plan for the site. Landscape along Hurstbourne Parkway shall include berms, and sufficient plantings to establish a "park way character" in the area zoned C-1 and sufficient plantings to establish a compatible "park way character" in the area zoned C-2. The buffer to be constructed along the southwest and southeast property lines shall provide a substantial and solid barrier between the residential uses to the south and the commercial uses on the site.~~~~

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6. ~~There shall be no direct access to Hurstbourne Lane except as shown on the approved district development plan. Primary access will be via the new public street constructed to serve this site.~~
7. ~~The developer shall construct and dedicate to public use the roadway shown on the approved district development plan and preliminary subdivision plan (Docket 10-5-85) prior to occupancy of any structure on this site.~~
8. ~~Off-site traffic improvements shown on the approved district development plan shall be constructed prior to occupancy of any structure on this site.~~
9. ~~No freestanding signs shall be erected until a plan showing their location, height, and size has been submitted to and approved by the Planning Commission.~~
10. ~~The screening (buffering/landscaping) shown on the approved district development plan shall be implemented prior to occupancy and maintained thereafter. Detailed planting plans shall be submitted prior to construction.~~
11. ~~If a building permit is not issued within one year of the date of approval of the plan or rezoning, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.~~
12. ~~A certificate of occupancy must be received from the appropriate code enforcement office 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.~~
13. ~~The applicant guarantees payment of the cost of constructing the portion of the proposed new roadway crossing the first tract located easterly of the subject property as shown on Sheet 2 of the proposed road plan entitled "Preliminary Council Crest Drive Extension from Bunsen Way to Hurstbourne Lane" that is part of the record in this case. Payment of such cost will be paid as construction of that portion of the proposed new roadway progresses.~~
14. ~~On the portion of the subject property located northerly of the proposed new road that divides the subject property, that is the auto sales part, the applicant will not place pennants nor will the applicant utilize outdoor loud speakers in connection with the auto sales agencies.~~

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~~15. The following uses are prohibited on the portion of the subject property located southerly of the proposed new road that divides the subject property:~~

~~a) Restaurants of the type known as "fast food" restaurants, characterized by freestanding buildings with drive-in facilities or drive-through windows to allow food and drink to be sold outside the building. This restriction shall not prohibit a café with sidewalk seating used in conjunction with indoor food service nor shall it prohibit a food court located within the shopping center where food may be served by a variety of vendors~~

~~b) Automobile service stations~~

~~c) Beer depots~~

~~d) Bowling alleys~~

~~e) Business schools, but not to be construed to prevent teaching activities related to the products sold in retail stores~~

~~f) Car washes~~

~~g) Exceptional residential uses h) Funeral homes~~

~~i) Retail nurseries, but this restriction is not intended to prohibit the sale of items such as potted plants in connection with a florist shop~~

~~j) Towers (radio/TV receiving or transmitting)~~

~~16. A landscaping plan must be submitted for approval by the full Commission in business session which meets Article 12.~~

~~17. The above binding elements may be amended as provided for in the Zoning District Regulations.~~

Proposed 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. 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 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 requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
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. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

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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; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed .5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.
9. A change of use to auto rental, repair service, or sales shall require a traffic impact study to be reviewed and approved by Develop Louisville. Road improvements and traffic mitigation identified in the traffic impact study shall be constructed prior to the issuance of certificate of occupancy.
10. The site shall not be used for the following uses:
 - a. Public Passenger Transportation Terminals.
 - b. Boat sales with outside storage.
 - c. Bingo Halls and Parlors.

The vote was as follows:

YES: Commissioners Robinson, Peterson, Daniels, Brown, Carlson, and Jarboe.
NOT PRESENT: Commissioners Smith, Lewis, Howard, and Tomes

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from the site must comply with Louisville Metro Ordinances; and the proposed zoning district would not permit junkyards, landfills, quarries, or similar uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 2: Community Form** because the proposed zoning district change would allow for an increased intensity of use on the subject site, which is located in an activity center; the subject site is located in an activity center, and is currently being used partially for retail uses. The existing retail uses can be anticipated to continue indefinitely; the proposed zoning district change would increase the intensity of permitted uses on property that is currently already used commercially, resulting in a more compact and efficient land use pattern in an existing activity center; the proposed zoning district change would permit a broader mix of uses than is currently allowed under the existing zone; the proposed zoning district would allow for a mix of residential and retail or office uses; the proposal would reuse existing structures; and the existing development has two outlots developed as restaurants; and

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Detailed District Development Plan with Binding Elements

03:01:37 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that 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, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Commission further finds that 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The proposed site plan reuses an existing vacant building for an entertainment complex; and

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WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan with the removal of the existing General Plan Binding Elements, and **SUBJECT** to the following binding elements:

General Plan Binding Elements (proposed to be removed)

- ~~1. Prior to development of each phase of the project, a detailed district development plan shall be submitted to the Planning Commission for approval. The plan shall be in adequate detail for the Commission to assess the impact of the development in the surrounding area. Each development plan shall be subject to additional binding elements.~~
- ~~2. The gross square footage for the portion of the development southwardly of the proposed road bisecting the property shall be 235,685 square feet including no more than 10,785 square feet for out parcels one and two. The total square footage for the portion of the property lying northwardly of the proposed road bisecting the property shall be 146,500 square feet.~~
- ~~3. No additional development or expansion shall take place unless additional parking is provided.~~
- ~~4. Any change in use of the building space shall receive certificate of occupancy permits only if no great deficit in parking is created.~~
- ~~5. Before a building permit is issued:
 - a) The development plan must be reapproved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.
 - b) The property owners or developers must obtain approval from the Planning Commission, in business session, of a screening, buffering and landscaping plan for the site. Landscape along Hurstbourne Parkway shall include berms, and sufficient plantings to establish a "park way character" in the area zoned C-1 and sufficient plantings to establish a compatible "park way character" in the area zoned C-2. The buffer to be constructed along the southwest and southeast property lines shall provide a substantial and solid barrier between the residential uses to the south and the commercial uses on the site.~~

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- ~~6. There shall be no direct access to Hurstbourne Lane except as shown on the approved district development plan. Primary access will be via the new public street constructed to serve this site.~~
- ~~7. The developer shall construct and dedicate to public use the roadway shown on the approved district development plan and preliminary subdivision plan (Docket 10-5-85) prior to occupancy of any structure on this site.~~
- ~~8. Off-site traffic improvements shown on the approved district development plan shall be constructed prior to occupancy of any structure on this site.~~
- ~~9. No freestanding signs shall be erected until a plan showing their location, height, and size has been submitted to and approved by the Planning Commission.~~
- ~~10. The screening (buffering/landscaping) shown on the approved district development plan shall be implemented prior to occupancy and maintained thereafter. Detailed planting plans shall be submitted prior to construction.~~
- ~~11. If a building permit is not issued within one year of the date of approval of the plan or rezoning, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.~~
- ~~12. A certificate of occupancy must be received from the appropriate code enforcement office 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.~~
- ~~13. The applicant guarantees payment of the cost of constructing the portion of the proposed new roadway crossing the first tract located easterly of the subject property as shown on Sheet 2 of the proposed road plan entitled "Preliminary Council Crest Drive Extension from Bunsen Way to Hurstbourne Lane" that is part of the record in this case. Payment of such cost will be paid as construction of that portion of the proposed new roadway progresses.~~
- ~~14. On the portion of the subject property located northerly of the proposed new road that divides the subject property, that is the auto sales part, the applicant will not place pennants nor will the applicant utilize outdoor loud speakers in connection with the auto sales agencies.~~

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~~15. The following uses are prohibited on the portion of the subject property located southerly of the proposed new road that divides the subject property:~~

~~a) Restaurants of the type known as "fast food" restaurants, characterized by freestanding buildings with drive-in facilities or drive-through windows to allow food and drink to be sold outside the building. This restriction shall not prohibit a café with sidewalk seating used in conjunction with indoor food service nor shall it prohibit a food court located within the shopping center where food may be served by a variety of vendors~~

~~b) Automobile service stations~~

~~c) Beer depots~~

~~d) Bowling alleys~~

~~e) Business schools, but not to be construed to prevent teaching activities related to the products sold in retail stores~~

~~f) Car washes~~

~~g) Exceptional residential uses h) Funeral homes~~

~~i) Retail nurseries, but this restriction is not intended to prohibit the sale of items such as potted plants in connection with a florist shop~~

~~j) Towers (radio/TV receiving or transmitting)~~

~~16. A landscaping plan must be submitted for approval by the full Commission in business session which meets Article 12.~~

~~17. The above binding elements may be amended as provided for in the Zoning District Regulations.~~

Proposed 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. 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 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 requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 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. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

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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; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed .5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.
9. A change of use to auto rental, repair service, or sales shall require a traffic impact study to be reviewed and approved by Develop Louisville. Road improvements and traffic mitigation identified in the traffic impact study shall be constructed prior to the issuance of certificate of occupancy.
10. The site shall not be used for the following uses:
 - a. Public Passenger Transportation Terminals.
 - b. Boat sales with outside storage.
 - c. Bingo Halls and Parlors.

The vote was as follows:

YES: Commissioners Robinson, Peterson, Daniels, Brown, Carlson, and Jarboe.
NOT PRESENT: Commissioners Smith, Lewis, Howard, and Tomes