

ORDINANCE No. 66, SERIES 2005

AN ORDINANCE CHANGING THE ZONING FROM R-5 SINGLE FAMILY RESIDENTIAL, OR-1 OFFICE RESIDENTIAL AND OR-3 OFFICE RESIDENTIAL TO C-1 COMMERCIAL ON PROPERTY LOCATED AT 3109-3125 POPLAR LEVEL ROAD AND 3 AUDUBON PLAZA DRIVE, CONTAINING 13.63 ACRES AND BEING IN LOUISVILLE METRO (DOCKET NO. 9-39-04VW) (AS AMENDED).

SPONSORED BY: COUNCILWOMAN MADONNA FLOOD

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") has considered the evidence presented at the public hearing held by the Louisville Metro Planning Commission and the recommendations of the Commission and its staff as set out in the minutes and records of the Planning Commission in Docket No. 9-39-04VW; and

WHEREAS, the Council concurs in and adopts the findings of the Planning Commission for the zoning change in Docket No. 9-39-04VW and approves and accepts the recommendations of the Planning Commission as set out in said minutes and records;

**NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:**

**Section I:** That the property located at 3109-3125 Poplar Level Road and 3 Audubon Plaza Drive, containing 13.63 acres and being in Louisville Metro, more particularly described in the minutes and records of the Planning Commission in Docket No. 9-39-04VW is hereby changed from R-5 Single Family Residential, OR-1 Office Residential and OR-3 Office Residential to C-1 Commercial, provided, however, said property shall be subject to the binding elements as set forth in the minutes of the

Planning Commission in Docket No. 9-39-04VW, except that binding elements 1, 3, 6.e., 7, and 12, 14, 15A, 16, 17, 18, 22, 24, 27, 28, 32, and 35 shall be amended to read as follows:

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 LDC. Any changes/additions/alterations of the development plan or any binding elements shall require the approval of the Planning Commission or authorized Committee thereof ~~the Metro Council~~; any changes/ additions/alterations not so approved shall not be valid. The proposed grocery store shall not be used for any purpose other than a grocery unless a change in use is approved by **the Metro Council**.
  
3. The development shall not exceed the square feet of gross floor area shown on the approved development plan. The square footage of the development shall not be increased without the approval of Metro Council.
  
- 6.e. Outdoor equipment. No refrigeration systems, refrigerators, freezers, coolers, vending machines, ice machines or similar equipment (except compressors) shall be located outside the building. All roof top equipment shall be screened from public view. This binding element may be amended only with the approval of Metro Council.
  
7. Lighting. (a) All outdoor lighting shall be directed down and away from adjoining residential properties. Light poles shall not exceed twenty-eight feet in height. **Parking lot** lighting fixtures shall be fully shielded and shall utilize flat lenses so that no light source (i.e., the lamp within the fixture) is visible from adjacent residential property. **All other lighting within the development shall be coach style lighting.** Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency from an engineer or other qualified professional stating that the lighting of the proposed development is in compliance with this Binding element. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certifications shall be maintained on site at all times thereafter.

- (b) Drive-thru pharmacy lighting. All luminaries mounted on or recessed into the lower surface of canopies or drive-through bays shall be fully shielded and utilize flat lenses. The maximum lighting level shall be 50 foot candles. Such lighting shall be decreased to 5-10 foot candles between hours the hours of 10 PM and 7 AM.
- (c) This binding element may be amended only with the approval of Metro Council.
12. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line. This binding element may be amended only with the approval of Metro Council.
14. 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.
- 15.A. 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.
16. The materials and design of proposed structures shall be substantially the same as depicted in the renderings and photographs as presented at the February 17, 2005 and March 17, 2005 Planning Commission meetings. The materials and design of the 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.
17. 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.

18. No overnight idling of trucks shall be permitted on site. This binding element may be amended only with the approval of Metro Council.
22. Outdoor activity. No loading, trash pickup (i.e. dumpster loading and unloading, pallet or trash removal from 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.
24. 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.
27. 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.
28. Prior to commencing site disturbance work, the developer shall contract with an archeologist 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.
32. Access from Audubon 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 Commission 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.
35. The design of the fencing along the easterly portion of the property shall be as 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.

Further, the property shall be subject to the following additional binding elements:

- 4-36. The developer/applicant/property owner shall plant large shade trees on the subject property approximately 50 feet on centers 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 requesting any permits, in accordance with Binding Element No. 9. This binding element may be amended only with the approval of Metro Council.
- 2-37. The developer/applicant/property owner shall incorporate a provision in all leases that requires each tenant to take measures for keeping shopping carts on the subject property and for periodically retrieving shopping carts along Illinois Avenue, Audubon Plaza, and Poplar Level Road that have been removed from the site. This binding element may be amended only with the approval of Metro Council.
- 3-38. The developer/applicant/property owner shall install a "Bright Site" 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.
- 4-39. 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.
- 5-40. 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 \$5000. 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.
6. All rooftop equipment shall be screened from public view.

**Section II:** This Ordinance shall take effect upon passage and approval.

Kathleen J. Herron  
Kathleen J. Herron  
Metro Council Clerk

Dr. Barbara E. Shanklin  
Dr. Barbara E. Shanklin  
President of the Council

Jerry Abramson  
Jerry Abramson  
Mayor

Approved: 5-17-05  
Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL  
READ AND PASSED**  
*May 12, 2005*

By: William P. O'Brien