



Amendment to Binding Element Application

Louisville Metro Planning & Design Services

Case No.: 15mcd/015 Intake Staff: Rinc

Date: 8/31/15 Fee: 246.50

Once complete, please bring the application and supporting documentation to Planning and Design Services, 444 South 5th Street, Suite 300. For more information, call (502) 574-6230 or visit <http://www.louisvilleky.gov/PlanningDesign>.

Note: This application is not required in conjunction with an application for a District Development Plan.

Project Information:

Project Description (e.g., retail center and office development, etc.): Amendment to Binding Element

Project Name: Foster Hydraulics

Primary Project Address: 7800 Johnstontown Road

Additional Address(es): _____

Primary Parcel ID: Block 1047, Lot 836

Additional Parcel ID(s): _____

of Residential Units: n/a Commercial Square Footage: _____

Proposed Use: same as existing Existing Use: _____

Existing Zoning District: EZ-1/R-1 Existing Form District: Neighborhood

Deed Book(s) / Page Numbers²: Deed Book 9319, Page 852

The subject property contains 0.53 acres. Number of Adjoining Property Owners: _____

Has the property been the subject of a previous development proposal (e.g., rezoning, variance, appeal, conditional use permit, minor plat, etc.)? *This information can be found in the Land Development Report (Related Cases)*¹ Yes No

If yes, please list the docket/case numbers:

Docket/Case #: 9-15-96 Docket/Case #: B-136-96

Docket/Case #: _____ Docket/Case #: _____

CONTACT INFORMATION:

Owner Information:

Entity or Individual Name: Timothy B. Foster

By: John C. Talbott, Attorney and Agent for the property owner

Address 6409 Triplett Woods Dr

City Louisville State KY Zip Code 40258

Phone: _____

E-mail: _____

Signature _____
Name & Title

Applicant Information:

Entity or Individual Name: same as owner

By: _____

Address _____

City _____ State _____ Zip Code _____

Phone: _____

E-mail: _____

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Plan Prepared by: Primary Contact _____

Print Name n/a

Company Name: _____

Address _____

City _____ State _____ Zip Code _____

Phone: _____

E-mail: _____

Attorney: Primary Contact X

Print Name John C. Talbott

Company Name: Bardenwerper Talbott & Roberts, PLLC

Address 1000 N. Hurstbourne Parkway 2nd floor

City Louisville State KY Zip Code 40223

Phone: 502-426-6688

E-mail: John@bardlaw.net

CERTIFICATION STATEMENT: A Certification Statement must be submitted with any application in which the owner(s) of the subject property is (are) a limited liability company, corporation, partnership, association, trustee, etc., or if someone other than the owner(s) of record sign(s) the application.

I, John C. Talbott _____ in my capacity as owner _____
Attorney & Agent for the property
Representative/authorized agent/other

hereby certify that Timothy B. Foster _____ is/are the owner(s) of the property which is the
name of LLC / corporation / partnership / association / etc.

subject of this application, and that I am authorized to sign this application on behalf of the owner.

Signature: _____ Date: August 31, 2015

I understand that knowingly providing false information on this Application may result in any action taken hereon being declared null and void. I further understand that pursuant to KRS 523.010 et seq., knowingly making a material false statement, or otherwise providing false information with the intent to mislead a public servant in the performance of his duty is punishable as a Class B misdemeanor.

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Binding Element Amendment Justification:

In order to justify approval of any amendments to binding elements, the Planning Commission considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

- 1. Are there any natural resources on the property, including trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites? And are these natural resources being preserved?**

This site is largely located in the floodplain, which is proposed for minimal disturbance, as more fully explained in the detailed letter accompanying this application.

- 2. Is safe and efficient vehicular and pedestrian transportation provided both within the development and the community?**

Safe and efficient vehicular access serve the existing business today, and when a detailed plan for possible future expansion or use is filed, all Land Development Code (LDC), Metro Works and Transportation Planning standards and MSD Floodplain Ordinance Regulatory requirements must be satisfied after being fully addressed on such plan.

- 3. Is sufficient open space (scenic and recreational) to meet the needs of the proposed development being provided?**

All LDC requirements in this regard can be fully provided.

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- 4. Are provisions for adequate drainage facilities provided on the subject site in order to prevent drainage problems from occurring on the subject site or within the community?**

MSD Floodplain Ordinance requirements will need to be addressed at time of detailed development plan submittal and review.

- 5. Is the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses compatible with the existing and projected future development of the area?**

LDC and MSD Floodplain Ordinance standards will be addressed at time of detailed development plan review.

- 6. Is the proposal in conformance with the Comprehensive Plan and Land Development Code?**

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Theoretically yes, because Compliance Plan and LDC Guidelines, Policies and regulatory requirements will be fully addressed on any detailed plan eventually filed with the respect to specific use of this property.

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
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August 31, 2015

Case Manager
Louisville Metro Planning & Design Services
444 S. Fifth Street
Louisville, Kentucky 40202

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Re: Amendment to Binding Element for Foster Hydraulics, previous Docket No. 9-15-96

Dear Case Manager:

We are herewith filing an application for an Amendment to Binding Elements to remove Binding Element #'s 1, 2, and 4 as set forth in the March 5, 1998 Planning Commission Minutes. The applicant/owner is actively seeking a buyer for this property and by eliminating these Binding Elements, the applicant can make this property more marketable. With the Binding Elements as currently adopted, the property is not marketable.

In order to provide some background, this property is located in southwest Jefferson County on the river-side of the floodwall. The binding elements were placed on the property in conjunction with a request for zoning change from R-1 Residential Single Family to EZ-1 Enterprise Zone. The property had been used by Foster Hydraulics for manufacturing, rebuilding, and repairing hydraulic equipment before the request for zoning change, operating as a legal non-conforming use which it continues to this day. The request for zoning change was related to the effort by the owners to construct a new building on the property to combine all existing operations and storage under one roof.

At the time of the request, the City was also considering the adoption of the Ohio River Corridor Master Plan (the "Proposed Plan"), which formed the primary basis to the objections to the zoning change. The Proposed Plan was proposed in 1996, but in the subsequent nineteen (19) years it has never been implemented.

In conjunction with the Proposed Plan, the City was also considering acquiring the adjacent property for some public use in the Plan. The adjacent property was then being used as a garbage transfer station which it is believed was considered undesirable by the City. The transfer station has now been abandoned and the City never obtained any funding to acquire the adjacent property. No other businesses or residences are in the vicinity of this property on the river-side of the floodwall. The failure for the Proposed Plan to be adopted in nearly twenty years and the tremendous negative impact these restrictions have on the property, particularly with marketability, are reasons the binding elements requested herein should be removed.

Binding Element No.1 specifically requires the improvements permitted in 1998 to be removed at the cost of the property owner in the event the City implements the Proposed Plan and obtains funding for the acquisition of the adjoining property. The cloud this restriction places on the property renders it completely unmarketable even though the circumstances for removal of the

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building no longer exist and which do not have any remotely reasonable possibility of being sought by the City in the future. The restriction itself effectively renders the property unmarketable while serving no purpose at this time, which is why it is being requested to be removed.

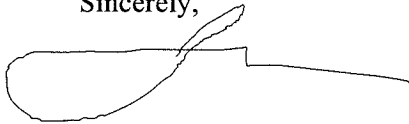
Binding Element No. 2 further restricts the property's use to solely that of "*rebuilding and repairing hydraulic cylinders or a similar machine shop operation.*" This specific use restriction was also placed on the property presumably in large part on the prospect the Proposed Plan might be adopted and to limit the potential conflict such different uses might have with the adjoining property. However, since the Proposed Plan was never adopted and considering that the garbage transfer station has shut down, Binding Element No. 2 should also be removed. It places an unnecessary burden and limitation on the property for no purpose at all.

Binding Element No. 4 restricts the use of tractor-trailer trucks on the site. This restriction again was placed on the property in large part because of the conflict it would cause with the adjoining property, which when in operation had many roll-off type trucks coming and going continuously in the garbage transfer business. There was not a convenient place for tractor-trailers coming to the subject property to turn around, which created a potential traffic issue with the other business. At this time, the sanitation/garbage transfer operation company no longer exists and thus its non-confirming use rights no longer exist. Consequently the potential conflict with the adjoining property's business is no longer an issue. Additionally, there is not any prospect of future residential development on the adjoining property with which the trucks could interfere due to the location in the 100-year flood plain. Consequently Binding Element No. 4 serves no purpose and it should be removed.

In summary, the elimination of the few Binding Elements mentioned above will allow the owner to sell the property for its fair market value and at the same time the remaining binding elements will continue to sufficiently limit the development of the property preventing any appreciable impact on adjoining properties.

We look forward to discussing this matter with you in further detail. If you have any questions, please do not hesitate to contact me. Many thanks.

Sincerely,



John C. Talbott

Cc: Timothy Foster, applicant

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