

Planning Commission Staff Report

September 19, 2019



Case No:	18DEVPLAN1026
Project Name:	Kameri Auto Sales
Location:	8500 National Turnpike
Owner(s):	Sami Kameri
Applicant:	Sami Kameri
Representative(s):	Milestone Design Group
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Waiver** of LDC, section 10.2 to not provide required plantings within landscape buffer areas and encroachment into the 10' VUA LBA
- **Alternative Method of Tree Canopy Compliance**
- **Revised Detailed District Development Plan**

CASE SUMMARY

This case was continued from Public hearings on both 12/20/18 and 01/10/19. On January 24th it was continued to a date uncertain.

The applicant is proposing to expand an existing auto dealership and auto inventory area located at the intersection of National Turnpike and Outer Loop. The subject property and adjacent properties under the same ownership are restricted by an LG&E easement that spans the width from the top-of-bank of the stream to the property line along Outer Loop. Plantings are not allowed within the LG&E easement. The proposed expansion follows the existing limits of development currently established by the auto dealership.

Initially, the applicant had coordinated with Planning staff and the Urban Forester to find alternative methods of compliance (off-site areas for plantings). A location was identified. However, the applicant did not agree to the fee associated with this alternative location. The applicant then located a site under the same ownership as the development site, but was unable to provide testimony at the January meetings or provide a draft deed restriction that had been reviewed and approved by Planning Commission's legal counsel. A total of 23 Type-A trees or 16,560 sq. ft. of tree canopy are required to meet compliance with Ch. 10 of the LDC.

On June 19, 2019, Planning Commission legal counsel approved the drafted Deed of Restrictions on property at 10003 National Turnpike to secure tree planting and maintenance agreements on this property. A tree canopy exhibit has been included in the record and will be recorded with the Restrictions.

Associated Cases

9-27-92: Change in zoning from M-2 to C-2 for Auto Sales

13565: Revised Detailed District Development Plan with variances (protected waterway) and waivers (Landscape and partial sidewalk)

18026: Revised Detailed District Development Plan
18695: Revised Detailed District Development Plan
18VARIANCE1103: Variance for protected waterway buffer granted by BOZA on 12/3/18.

STAFF FINDING

The waiver and detailed plan appear to be adequately justified based on staff's analysis contained in the standard of review. The Planning Commission will need to approve or deny the alternative method for tree canopy compliance.

TECHNICAL REVIEW

The Planning Commission must approve all off-site tree plantings. In no case shall the Planning Commission require the planting of off-site trees to meet the minimum standards. In considering the alternative location, the Planning Commission should determine if the site is acceptable as an alternative location and that sufficient agreements have been made for the continued maintenance of the off-site plantings. The applicant will need to provide a written agreement (deed restriction, conservation easement, or other instrument) to permanently preserve and maintain these trees. A binding element has been added to indicate that off-site compliance will be provided for the proposed development plan.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (VUA LBA)

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the site is located at the intersection of major streets and the proposed expansion follows existing development envelopes along the right-of-way. Plantings are unable to be provided due to the existence of an LG&E easement.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The subject site abuts similar uses and would not appear to have any adverse impacts on any adjacent uses. The subject site does not abut

residential areas. Appropriate landscape design cannot be followed due to the existence of an LG&E easement in which no planting may occur.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as waivers have previously been granted to create the existing building envelope and the proposed development is in line with the existing conditions.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. The easement overhead prevents planting material from being installed.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DETAILED DISTRICT DEVELOPMENT PLAN

- a. 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;

STAFF: The proposed development is located on a site with considerable limitations. A variance was granted by the Board of Zoning Adjustment for encroachments into the waterway buffer on December 3, 2018. The site contains an easement which prevents tree canopy compliance on-site. The development proposed follows the existing limits of disturbance with respect to stream side and right-of-way.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as sidewalks are available along National Turnpike and no additional improvements were required by code.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space is not required of this development.

- d. 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;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The proposed development is compatible with the existing and projected future development of the area as the proposal follows the existing limits of disturbance with respect to stream side and right-of-way.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The proposed development plan generally conforms the Comprehensive Plan, with the exception tree canopy compliance on-site due to site restrictions. The development does not expand into or impact residential areas or lower intensity uses. The site has access from arterial roadways and public sidewalks are available on National Turnpike. Tree canopy will be provided at an off-site location in conformance with LDC 10.1.3.

REQUIRED ACTIONS

- **APPROVE** or **DENY** an alternative method of tree canopy compliance
- **APPROVE** or **DENY** the **Waiver** of LDC, section 10.2 to not provide required plantings within landscape buffer areas and encroachment into the 10' VUA LBA
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** with the addition of proposed binding elements nos. 4f & 8.

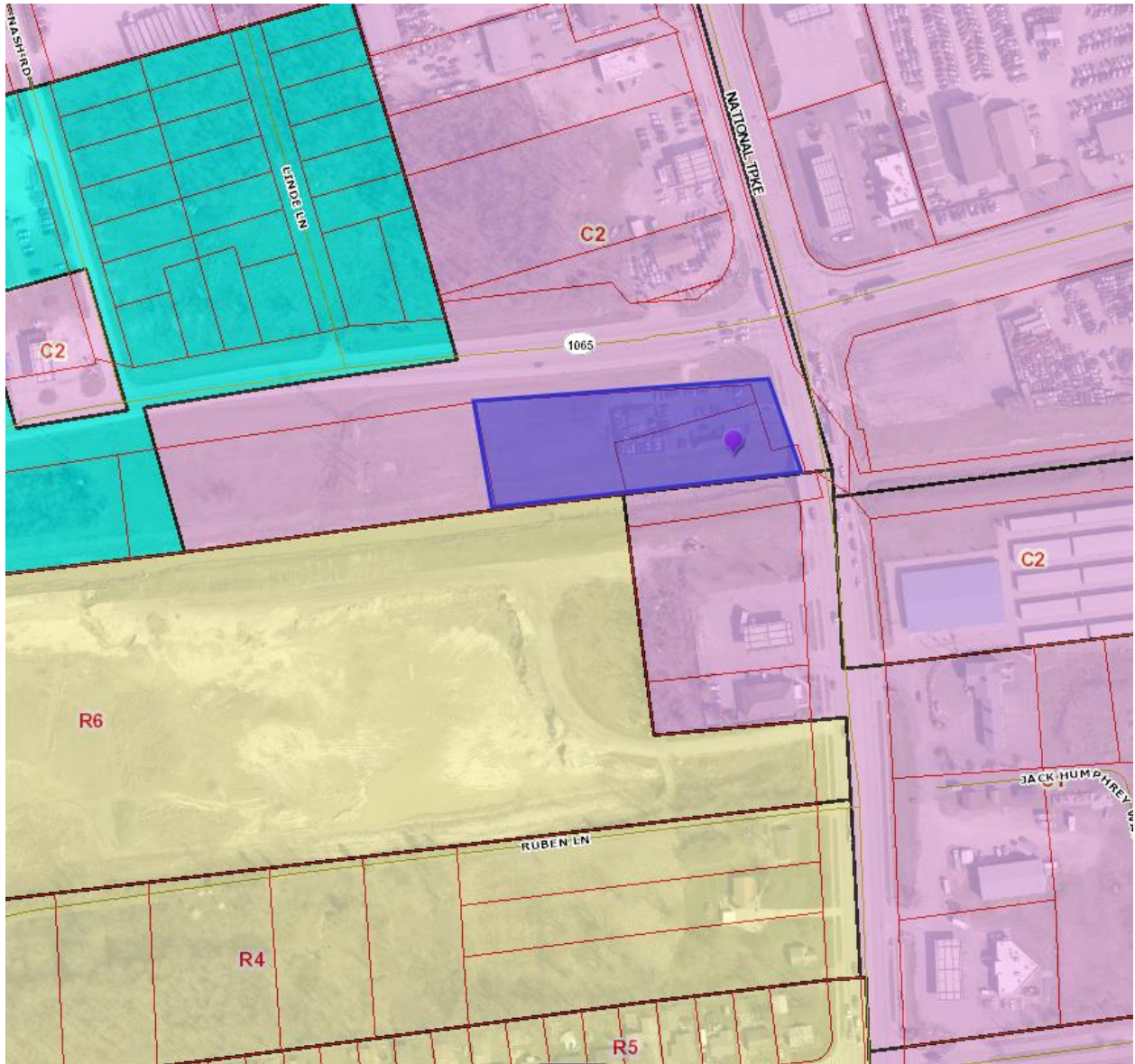
NOTIFICATION

Date	Purpose of Notice	Recipients
12/6/18	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 13
9/6/19	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 13

ATTACHMENTS

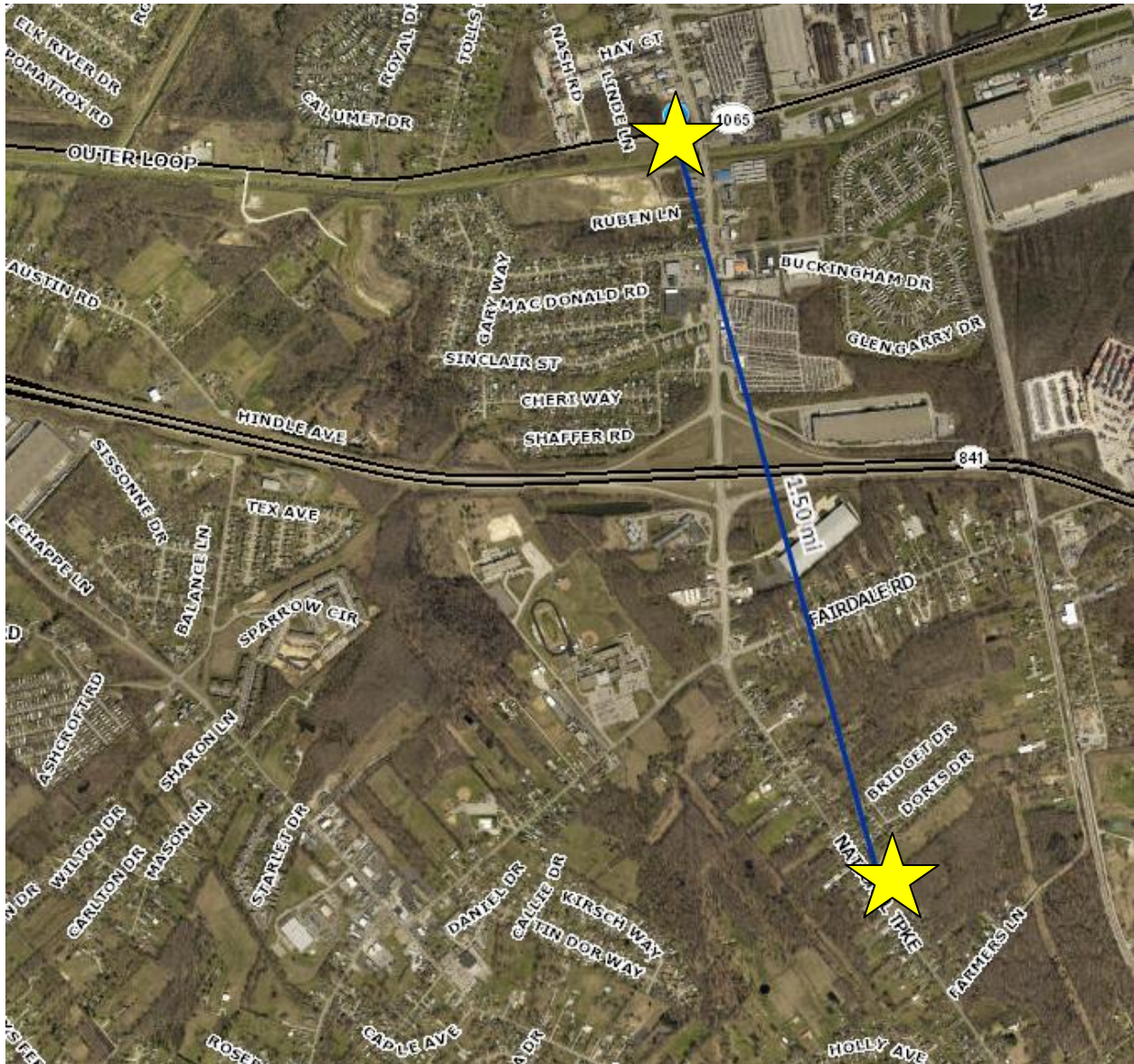
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements
5. Alternative Compliance Regulations (excerpt from LDC 10.1.3)

1. **Zoning Map**



2. Aerial Photographs





Distance to off-site canopy location – 1.5 miles.

3. Existing 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 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. At such time when the site is redeveloped beyond the area shown on the Revised Detailed District Development Plan dated February 22, 2010 for Tract 3 at the intersection of Outer Loop and National Turnpike, the vehicular access to National Turnpike shall be removed with curb and sidewalk restored to match the existing conditions on National Turnpike.
2. The development shall not exceed 3,406 square feet of gross floor area.
3. No steaming of engines shall occur on site.
4. Before a building or alteration permit and/or certificate of occupancy is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor plat or legal instrument shall be recorded subdividing the property into two lots. A copy of the recorded instrument shall be submitted to the Planning Commission.
 - d. The size and location of any freestanding sign must be approved by the Planning Commission. The Planning Commission may require that the sign be smaller than required by the Zoning District Regulations.
 - e. 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.
5. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants or banners shall be permitted on the site.
7. 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.

4. 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 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. At such time when the site is redeveloped beyond the area shown on the Revised Detailed District Development Plan dated February 22, 2010 for Tract 3 at the intersection of Outer Loop and National Turnpike, the vehicular access to National Turnpike shall be removed with curb and sidewalk restored to match the existing conditions on National Turnpike.
3. The development shall not exceed 3,406 square feet of gross floor area.
4. No steaming of engines shall occur on site.
5. Before a building or alteration permit and/or certificate of occupancy is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor plat or legal instrument shall be recorded subdividing the property into two lots. A copy of the recorded instrument shall be submitted to the Planning Commission.
 - d. The size and location of any freestanding sign must be approved by the Planning Commission. The Planning Commission may require that the sign be smaller than required by the Zoning District Regulations.
 - e. 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.
 - f. **A copy of the recorded Deed of Restrictions, as outlined in Binding Element #8, for alternative tree canopy compliance shall be provided for incorporation into the record.**
6. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants or banners shall be permitted on the site.
7. 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.
8. **Compliance with Chapter 10, Part 1 (Tree canopy) shall be provided on property located at 10003 National Turnpike and preserved in perpetuity, unless modified**

by the Planning Commission or designee. A legal instrument acceptable to the Planning Commission's legal counsel shall be provided and shall outline the area of proposed off-site plantings and their continued maintenance and preservation.

5. Alternative Compliance Regulations (excerpt from LDC 10.1.3)

If a development site cannot meet the tree canopy requirements through preservation or the planting of new trees, then the applicant may come into compliance by planting new trees on an alternative site under the following requirements:

It should be noted that using an alternative site to meet the tree canopy requirements is an option available to developers that must be approved by the Planning Commission. In no case shall the Planning Commission require the off-site planting of trees to meet the requirements of this Part.

- a. A written agreement between the applicant and property owner regarding the planting and maintenance of the trees must be submitted.
- b. The plantings must be provided and installed at the applicant's expense unless otherwise stated.
- c. The Planning Director or designee may determine an alternative site for the planting of an equivalent number/amount of trees that meets any one of the following criteria:
 1. A site within a public park approved by the Metropolitan Parks Department;
 2. A site on a public road right-of-way, not adjacent to the development site, approved by the Director of Public Works or by the appropriate state or federal official in the event that the site is on a state or federal road;
 3. A privately developed site upon which affordable housing has been constructed or is to be constructed; and
 4. A site of existing development where the Planning Director or designee finds that additional tree canopy would be in the public interest.
 5. The Planning Director or designee may condition its approval of an alternative site upon the agreement of the applicant to plant a tree or trees of a type that is deemed appropriate for the site.

If one of the above methods of compliance cannot be met for the development site then the applicant may pay a fee in lieu in an amount as determined by the Planning Director or designee and Urban Forestry Coordinator (or comparable position), to a designated tree account per 1 3/4" caliper tree required to meet a sites tree canopy requirement. These tree funds will be administered and tracked by the Urban Forestry Coordinator for the planting and maintenance of trees pursuant to the City's most recent tree canopy study