

# Development Review Committee

## Staff Report

August 4, 2021



<b>Case No:</b>	21-DDP-0044
<b>Project Name:</b>	Peters Dental
<b>Location:</b>	9220 Preston Highway
<b>Owner(s):</b>	Camileo LLC
<b>Applicant:</b>	Camileo LLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	24 – Madonna Flood
<b>Case Manager:</b>	Dante St. Germain, AICP, Planner II

### REQUESTS

- **Waiver** of 5.5.2.A.1 to omit the required principal entrance facing the abutting public street (21-WAIVER-0077)
- **Revised Detailed District Development Plan** and revised Binding Elements

### CASE SUMMARY

The subject site is located on Preston Highway approximately 750 feet south of the intersection with South Park Road/E Manslick Road and consists of one parcel. The site is currently developed with a single-family residence in commercial use. The applicant proposes to subdivide the property and construct a new 8,025 square foot office structure on the proposed front lot.

### STAFF FINDING

The waiver is not adequately justified and does not meet the standard of review. The RDDDP is adequately justified and meets the standard of review.

### TECHNICAL REVIEW

MSD and Transportation Planning have provided preliminary approval of the proposal. The site was rezoned in 2003 under docket 09-52-03, from R-4 to C-N for a proposed tea room and gift shop. The existing structure on the site is eligible for the National Register of Historic Places, the Farman-Sellers House. The previously approved plan reflects a 3,250 square foot addition to the existing garage, which was not constructed, although the garage remains.

The elevations provided by the applicant show the articulated front entrance of the new structure facing the parking lot, with a side wall facing Preston Highway. The elevations were reviewed by Cynthia Elmore, the Preservation Officer, in accordance with existing Binding Element 22. The front elevation was approved.

### INTERESTED PARTY COMMENTS

Councilwoman Madonna Flood contacted staff by telephone to express opposition to the proposed waiver.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

- a. The waiver will not adversely affect adjacent property owners; and,

STAFF: The waiver would adversely affect adjacent property owners, as the adjacent properties across Preston Highway would face a side wall of the structure closest to the street.

- b. The waiver will not violate the Comprehensive Plan; and,

STAFF: The waiver will violate the Comprehensive Plan as Community Form Goal 4, Policy 1 encourages the compatibility of new construction in the impact area to historic resources, with respect to height, massing, scale, architectural style and placement of the new structures. The architectural style of the new structure would be compatible if the structure faced the public street.

- c. The extent of 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 not the minimum necessary to afford relief to the applicant. The building could have entrances and a treatment that is the same as that of the façade facing the parking lot on the façade that faces the public street. In the alternative, the proposed structure could be relocated to the rear of the lot beside the existing building and face the public street.

- d. Either: 1. 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 2. 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 applicant has not incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived, and the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the building could be moved, or the street-facing façade given the same treatment as the front of the building facing the parking lot.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP**

- 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: There do not appear to be any environmental constraints or natural resources on the site. The existing historic building is proposed to be preserved.

- 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 has been provided. Louisville Metro Public Works has provided preliminary approval of the plan.

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

STAFF: No open space provisions are relevant to the proposal.

- 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 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.

- 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 overall site design and land uses are compatible with the existing and future development of the area. The scale of the proposed structure is similar to the scale of adjacent structures and the existing structure on the site. The proposed use would be compatible with the commercial development along Preston Highway.

- 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 development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, with the exception of a requested waiver.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** and revised Binding Elements

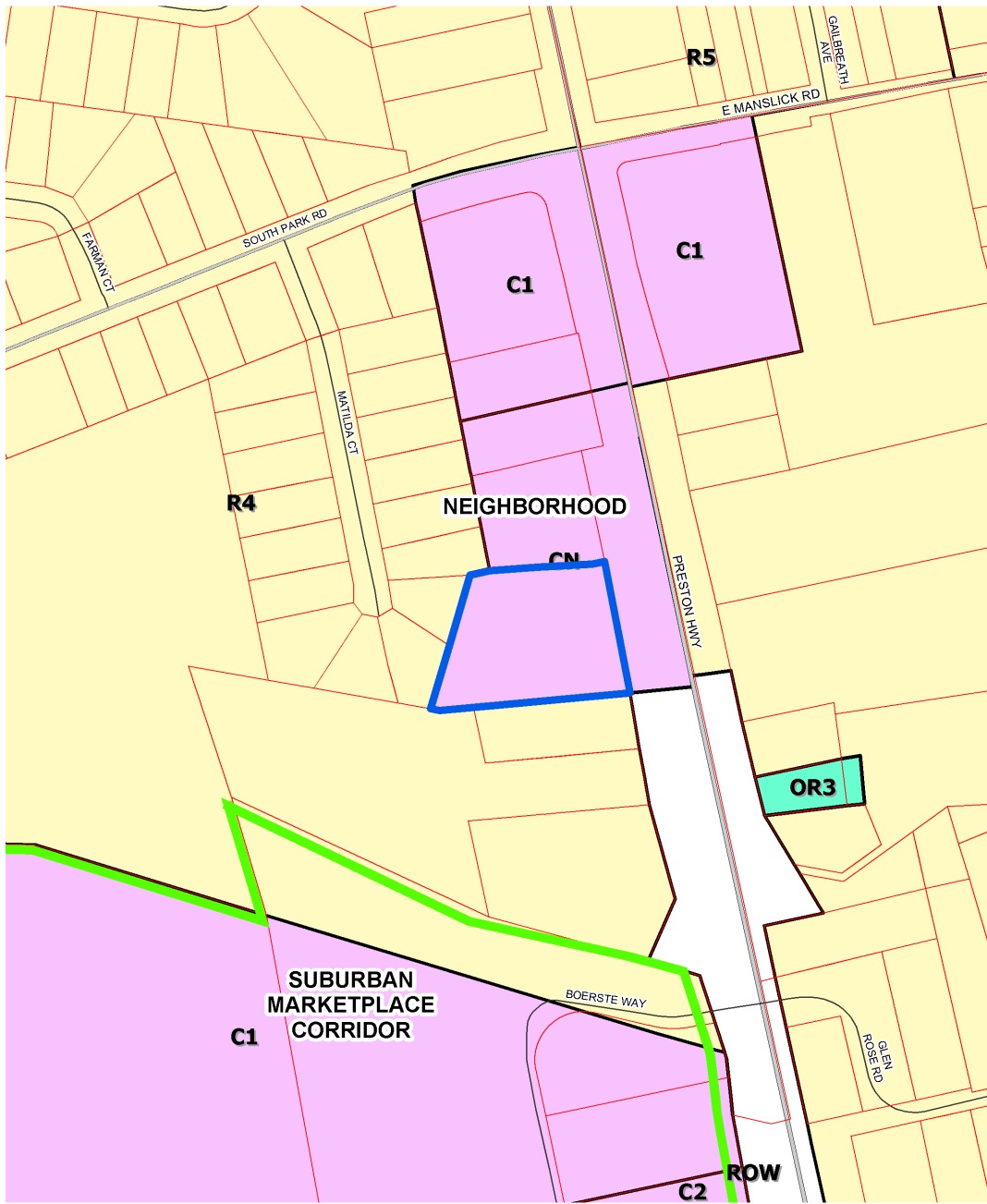
**NOTIFICATION**

Date	Purpose of Notice	Recipients
06/29/2021	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 24

**ATTACHMENTS**

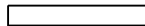
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. Zoning Map



9220 Preston Highway

feet



230

Map Created: 7/6/2021

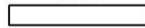


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2. Aerial Photograph



9220 Preston Highway  
feet



230

Map Created: 7/6/2021



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### 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. No application to amend binding elements or to revise the development plan shall be accepted without the applicant providing evidence that it provided adjoining property owners and the Okolona Baptist Church fifteen (15) days written notice of the request.
3. The residential character of the existing structure shall be maintained ~~and any new structure(s) on the property shall be of the same or substantially similar appearance to the main existing structure on the subject property.~~ Changes to the following items on the existing structure shall not be made without prior approval of the Planning Commission's designee:
  - a. roof line
  - b. building material
  - c. porch
  - d. windows
- ~~4. The following C-N uses shall be allowed on the subject property:
  - a. Antique shops and interior decorating shops
  - b. Restaurant (Tea room)
  - c. Gift shop~~
- ~~5. The development shall not exceed 6,042 square feet of gross floor area (800 SF Tea Room, 5,242 SF Retail).~~
- ~~6. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (60 sq. ft. and 6 ft. tall).~~
7. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
8. 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.
9. 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 Louisville Metro Public Works & Transportation ~~and, the Metropolitan Sewer District~~ **and Construction Review.**
  - b. Encroachment permits must be obtained from the ~~Kentucky Department of Transportation, Bureau of Highways~~ **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 building permit.

Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- e. **The materials and design of proposed structures shall be substantially the same as depicted in the rendering presented at the July 14, 2021 Development Review Committee meeting.**
- f. **A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. 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.**
- g. **A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between Tracts 1 and 2 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.**

~~10. If a certificate of occupancy or building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, 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.~~

11. 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.

12. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system.

13. 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.

~~14. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 6, 2003 Planning Commission meeting.~~

~~15. The applicant shall provide documentation showing that the development complies with all the regulations from Chapter 4, Part 1, Section 3, Lighting, prior to the issuance of a construction permit. These regulations include the following items:~~

- ~~a. Mounting Height Limit~~
- ~~b. Luminaire Shielding~~
- ~~c. Canopy Lighting Level~~
- ~~d. Light Trespass~~

- ~~16. 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.~~
- ~~17. The applicant shall work with adjoining property owners to place required landscaping on the site in a way to maximize its buffering effects on the adjoining properties.~~
- ~~18. 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:~~

- ~~a. 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. Tree in these areas may be removed during construction of homes or buildings on individual lots.~~
  - ~~b. 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.~~
  - ~~c. 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 WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.~~
  - ~~d. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.~~
  - ~~e. 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 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.~~
19. No idling of trucks shall take place within 200 feet of ~~single-family residences~~ **residential structures**. No overnight idling of trucks shall be permitted on-site.
  20. 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.
  21. The parking lot surface material shall be approved by Louisville Metro Public Works in consultation with the Fire Department.



~~22. The design of the proposed or any additional building, structure or sign on the property shall be approved by the Louisville Metro Preservation Officer, currently Richard Jett.~~

23. The hours of operation of any business conducted on the site shall be limited to ~~10:00 a.m.~~ \_\_\_\_\_ **a.m.** to ~~9:00 p.m.~~ \_\_\_\_\_ **p.m.** Monday through Saturday.

#### 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. No application to amend binding elements or to revise the development plan shall be accepted without the applicant providing evidence that it provided adjoining property owners and the Okolona Baptist Church fifteen (15) days written notice of the request.
3. The residential character of the existing structure shall be maintained. Changes to the following items on the existing structure shall not be made without prior approval of the Planning Commission's designee:
  - a. roof line
  - b. building material
  - c. porch
  - d. windows
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. 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 Louisville Metro Public Works, the Metropolitan Sewer District and Construction Review.
  - 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 14, 2021 Development Review Committee meeting.
  - f. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. 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.
  - g. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between Tracts 1 and 2 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.
7. 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.
  8. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system.
  9. 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.
  10. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
  11. The hours of operation of any business conducted on the site shall be limited to \_\_\_\_ a.m. to \_\_\_\_ p.m. Monday through Saturday.