

# Planning Commission Staff Report

November 4, 2021



<b>Case No:</b>	21-ZONE-0076
<b>Project Name:</b>	8907 US HWY 42
<b>Location:</b>	8907 US HWY 42
<b>Owner(s):</b>	Plainview Pre-Primary School
<b>Applicant:</b>	Jeff Byrne
<b>Representative(s):</b>	Bardenwerper, Talbott, & Roberts, PLLC
<b>Jurisdiction:</b>	City of Prospect
<b>Council District:</b>	16 – Scott Reed
<b>Case Manager:</b>	Joel P. Dock, AICP, Planning Coordinator

## REQUEST(S)

- **Change-in-Zoning** from R-4, single-family residential to OR-3, office-residential
- **Variance** from Land Development Code, section 5.3.1.C.5 to exceed the maximum setback of 80' and be located as shown on the development plan
- **Detailed District Development Plan**

## CASE SUMMARY

The subject site is on the east side of U.S. Highway 42 and to the south of a commercial center located along Timber Ridge Drive. A religious institution and recently approved restaurant (case # 20-ZONE-0071) separate the subject site from this activity center.

The proposal includes a 5,000 sq. ft, 1-story medical office building with parking and cross-connectivity with the proposed restaurant. Access will be obtained from an existing drive. No new access to U.S. HWY 42 is proposed. A variance has also been requested to allow the building to be setback greater than the maximum of 80'. The additional setback allows for cross access to the proposed restaurant.

## STAFF FINDING

The proposal conforms to the land use and development policies of Plan 2040. The variance and detailed plan have also been adequately justified for approval based on staff's analysis contained in the standard of review.

## STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES

Criteria for granting the proposed form district change/rezoning: *KRS Chapter 100.213*

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; **OR**
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; **OR**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

## **STAFF ANALYSIS FOR CHANGE IN ZONING**

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

### The site is in the Village (outlying) Form District

Village Form is characterized by predominately low to medium density residential uses where the pattern of development is distinguished by open space such as parks, greenways, and farmland protected by conservation easements. The Village Form should have a small-scale village center with a mixture of uses such as offices, shops, restaurants, services and a diversity of housing types that may be higher in density than the rest of the district. The village center may be arranged around a village green. Low-density residential uses interspersed with open space may be encouraged at the edge of the Village. Village Form should be designed to encourage pedestrian, bicycle and transit use.

The proposed zoning is located within proximity to an activity center where demand and infrastructure is available to support the proposed land use. The proposed site is in a transitional area moving from the center where it is adjacent to non-residential uses. Development appears compatible with the activity center and nearby uses. All improvements to provide connectivity will provisions along the site frontage.

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

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance benefits the adjacent property owner as it allows for cross-connectivity and parking facilities to be provided.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as this property sits on an out lot and brings the existing development site closer to the roadway.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as pedestrian and vehicular circulation will not be adversely impacted and cross connectivity is provided.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as it allows for the desired parking layout with cross connectivity to adjacent commercial use.

## **ADDITIONAL CONSIDERATIONS:**

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone. It does allow for the desired parking layout with cross connectivity provided.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR 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 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 will be provided. Landscaping and tree canopy will be provided as required.

- 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 as cross-connectivity will be provided with an adjacent proposed user.

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

STAFF: Open space is not required on with this application. Tree canopy is preserved to the rear of the development area.

- 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 development in the area and the pattern of the form district. New construction is proposed.

- 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 conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified.

**REQUIRED ACTIONS**

- **RECOMMEND** to the City of Prospect that the **Change-in-Zoning** from R-4 to OR-3, office-residential on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE** or **DENY** the requested **Variance** from Land Development Code, section 5.3.1.C.5 to exceed the maximum setback of 80' and be located as shown on the development plan
- **APPROVE** or **DENY** the **Detailed District Development Plan**

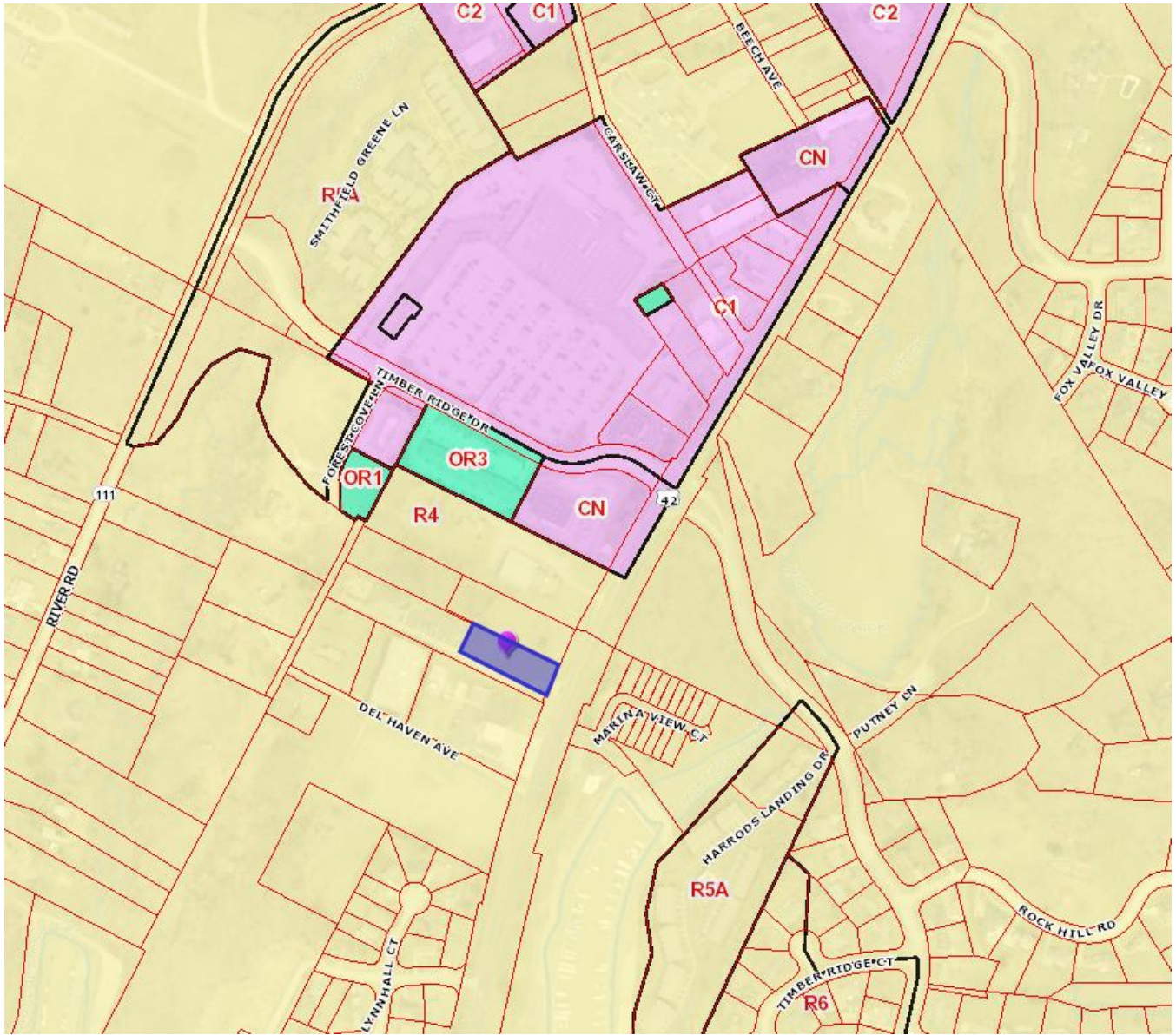
**NOTIFICATION**

Date	Purpose of Notice	Recipients
9/30/21	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 16
10/21/21	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 16
10/19/21	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Staff Analysis
4. Proposed Binding Elements

1. Zoning Map





2. Aerial Photograph



### 3. Plan 2040 Staff Analysis

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

#### Village: Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	<b>6.</b> Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	While the proposal is adjacent to residential zones, it does not abut residential uses and the area provides a transition from the higher intensity activity center to lower intensity districts before reaching out lower density districts. It does not result in a non-residential expansion into the residential area.
Community Form: Goal 1	<b>7.</b> Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposed zoning is located within proximity to an activity center where demand and infrastructure is available to support transit service.
Community Form: Goal 1	<b>17.</b> Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	The proposal would not appear to generate volumes of traffic that would negatively impact nearby development.
Community Form: Goal 1	<b>18.</b> Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The proposed district does not generally allow uses that produce large volumes of noise that might cause a nuisance, specifically upon nearby institutional uses.
Community Form: Goal 2	<b>1.</b> Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The proposed site is in a transitional area moving from the Village Center where it is adjacent to non-residential uses. Development appears compatible with the activity center and nearby uses.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 2	<b>4.</b> Allow non-residential development within the Neighborhood, Traditional Neighborhood and Village Form Districts to occur only at locations with appropriate access and connectivity.	✓	The proposed district will continue pedestrian connectivity that can be made in the future to the activity center by providing all required improvements.
Community Form: Goal 2	<b>6.</b> Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	Development on the subject site concentrates non-residential activity in an area that does not encroach upon residential areas which results efficient land use and cost-effective infrastructure investment.
Community Form: Goal 2	<b>7.</b> Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposed district is located so that it provides additional activities adjacent to a center.
Community Form: Goal 2	<b>11.</b> Ensure appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences.	✓	The proposed district is located so that it provides additional activities in an area of commercial activity. The placement of the district is appropriate given its proximity to the center and adjacency to non-residential uses.
Community Form: Goal 3	<b>9.</b> Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	The site does not contain sensitive natural features. All required tree canopy will be provided.
Community Form: Goal 3	<b>10.</b> Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	The development site does not appear to contain wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists.
Community Form: Goal 3	<b>12.</b> When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	✓	The development site does not appear to be in a flood prone area or vulnerable natural disasters such as sinkholes and landslides.



Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	✓	The site is vacant and does not contain historic resources.
Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	The site is vacant and does not contain distinctive cultural features including landscapes, natural elements and built features.
Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposed site is in a transitional area moving from the Village Center where it is adjacent to non-residential uses.
Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access is from an arterial roadway and would not impact lower intensity uses.
Mobility: Goal 3	1. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposed district provides neighborhood serving uses and services adjacent to a village center which encourages shorter trips from population centers nearby.
Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The propose district provides neighborhood serving uses and services adjacent to a village center which encourages shorter trips from population centers nearby.
Mobility: Goal 3	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The proposed zoning is located within proximity to an activity center where demand and infrastructure is available to support transit service.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Mobility: Goal 3	<p><b>4.</b> Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following:</p> <p><b>4.1.</b> nodal connections identified by Move Louisville;</p> <p><b>4.2.</b> impact on freight routes;</p> <p><b>4.3.</b> time of operation of facilities;</p> <p><b>4.4.</b> safety;</p> <p><b>4.5.</b> appropriate linkages between neighborhoods and employment; and</p> <p><b>4.6.</b> the potential for reducing travel times and vehicle miles traveled.</p>	✓	The proposed zoning is located within proximity to an activity center where demand and infrastructure is available to support transit service.
Mobility: Goal 3	<p><b>5.</b> Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.</p>	✓	The proposed c zoning is located within proximity to an activity center where demand and infrastructure is available to support transit service. All improvements will be made as required.
Mobility: Goal 3	<p><b>6.</b> Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.</p>	✓	All improvements to the roadway and pedestrian infrastructure will be made as required.
Mobility: Goal 3	<p><b>9.</b> When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.</p>	✓	All improvements to the roadway and pedestrian infrastructure will be made as required.
Community Facilities: Goal 2	<p><b>1.</b> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.</p>	✓	Utilities are available
Community Facilities: Goal 2	<p><b>2.</b> Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.</p>	✓	An adequate supply of potable water and water for fire-fighting purposes would appear to be available

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Facilities: Goal 2	<b>3.</b> Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has provided preliminary plan approval to ensure a means of sewage treatment and disposal to protect public health and to protect water quality
Economic Development: Goal 1	<b>3.</b> Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	The proposal is on an arterial roadway adjacent to an activity center where nuisances and activities of the proposed use will not adversely affect adjacent areas.
Livability: Goal 1	<b>17.</b> Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	The development site does not appear to contain vulnerable environmental features.
Livability: Goal 1	<b>21.</b> Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	The development site is not located within the floodplain.

**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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, Bureau of Highways.
  - 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 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
3. 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.
4. 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.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.