

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 22-DDP-0078

Request: Revised Detailed District Development Plan with revisions to Binding Elements
Project Name: Thieneman E Orell
Location: 11905 Dixie Hwy
Owner: 11905 Dixie Hwy LLC
Applicant: 11905 Dixie Hwy LLC
Representative: Land Design and Development
Jurisdiction: Louisville Metro
Council District: 14 - Cindi Fowler
Case Manager: Jay Lockett, AICP, Planner II

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:08:36 Jay Lockett presented the case, showed a Power Point presentation, and responded to questions from the Commissioners. He noted that this case was originally heard at the December 15, 2022 Planning Commission hearing, and was continued to this date to address questions about gates and fences. Those have now been shown on the plan (see staff report and recording for detailed presentation.)

He also discussed an additional proposed binding element not included in the staff report (would be binding element #17), to read as follows:

The hours of operation for the site shall be limited to 8am to 6pm. The gate on Dixie Hwy shall remain open during operating hours and the gates on site shall remain locked outside of normal operating hours. Security fencing around the site shall be kept in good repair and the site shall be secure at all times when no employees or property owners are on-site.

00:11:58 Commissioner Carlson asked that proposed binding element #16 should read as follows:

No trailers required by USDOT Regulations to display hazardous materials placards shall be parked on the subject site.

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Mr. Lockett said the applicant agreed verbally to this at the last hearing.

00:12:46 Mr. Lockett and the Commissioners discussed traffic turning into the site from Dixie Highway and how the gate would affect this. In response to a question from Commissioner Brown, Mr. Lockett and Beth Stuber, with Louisville Metro Transportation Planning, discussed the KYDOT's response to the gated access on Dixie Highway, which appears to be right on the right-of-way. Ms. Stuber said Metro Transportation had asked the applicant to move the gate inward, but the applicant did not want to. She said she thought a binding element had been proposed that should address some of this (see recording for detailed discussion.)

The following spoke in support of the request:

Ted Bernstein, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in support:

00:16:58 Ted Bernstein, the applicant's representative, presented the applicant's case, showed a Power Point presentation, and responded to questions from the Commissioners (see recording for detailed presentation and discussion.)

00:19:40 In response to questions from Commissioners Carlson and Brown, Mr. Bernstein discussed the gates' locations (they are close to, but not in, the ROW.)

00:20:52 In response to questions from Commissioner Mims, Ms. Stuber said the Metro Transportation had requested that the gates be at least 20 feet from the property line. Mr. Bernstein said that would affect some of the parking spaces, but that the applicant is willing to work with Metro Transportation Planning to potentially relocate some areas of fencing, and the gates (see recording.)

The following spoke in opposition to the request:

No one spoke.

Deliberations:

00:22:57 Commissioners' deliberation.

An audio/visual recording of the Planning Commission hearing related to this

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case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

00:25:35 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today and at the December 15, 2022 Planning Commission meeting, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject site; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Commission further finds that 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; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways except where waivers have been approved. Buildings and parking lots will meet all required setbacks except where variances have been approved; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Revised Detailed District Development plan with Revisions to Binding Elements be **APPROVED ON CONDITION** that the plan is updated to show the gated access from Dixie Highway is a minimum of 20 feet from the property line, and **SUBJECT** to the following binding elements:

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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 outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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 Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, 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 minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
5. Prior to any site disturbance permit being issued and prior to any clearing,

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grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.

6. 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.
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
8. 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.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 2, 2017 Planning Commission hearing.
10. The subject property shall only be used for those uses allowed in the C-M zoning district that are otherwise allowed in the C-2 zoning district and for "Warehouse, storage, outdoor storage and sales of trailers" but for no other use permitted in the M-1 zoning district. Any amendment to this binding element shall require approval from the Louisville Metro Planning Commission and from the Louisville Metro Council.
11. There shall be no storage of coal ash/fly ash on the premises.
12. The sidewalks along E. Orell Rd. shall be extended to the Orell Rd. intersection.
13. Any change of use or change to the approved development plan shall require Metro Council review and approval.

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14. Trailer sales on the subject site shall be limited to medium duty utility trailers and recreational vehicle trailers as defined by the Land Development Code.
15. All trailers parked on the subject site shall be in an operable condition.
16. No trailers required by US Department of Transportation Regulations to display hazardous materials placards shall be parked on the subject site.
17. The hours of operation for the site shall be limited to 8am to 6pm. The gate on Dixie Hwy shall be a minimum of 20 feet from the property line, and shall remain open during operating hours and the gates on site shall remain locked outside of normal operating hours. Security fencing around the site shall be kept in good repair and the site shall be secure at all times when no employees or property owners are on-site.

The vote was as follows:

YES: Commissioners Mims, Pennix, Brown, Cheek, Carlson, Howard, and Lewis.

ABSTAIN: Commissioner Fischer.

ABSENT: Commissioners Sistrunk and Clare.