

Board of Zoning Adjustment
Staff Report
July 24, 2023



Case No:	23-MCUP-0003
Project Name:	Louisville Underground
Location:	1841 Taylor Avenue
Owner(s):	Jim Lowery – Louisville Underground, LLC.
Applicant:	Bardenwerper , Talbott & Roberts, PLLC.
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Molly Clark, Planner II

REQUEST(S)

- **Modified Conditional Use Permit** from section 4.2.52 of the Land Development Code for Underground Space

CASE SUMMARY

The original conditional use permit was granted by the Planning Commission in conjunction with a rezoning from R-5 to CM and M2 under case number 9-17-88C for underground space. The conditional use permit was modified under case number B-15780 on May 2, 2011 to allow additional uses:

“...public gatherings and events (including but limited to a holiday light show, fundraisers, receptions, weddings, galas, catered events banquets, conventions, exposition building, etc.); concerts and recitals, recreational and athletic uses (including, but not limited to paintball, soccer, volleyball, baseball, zip-line, rock climbing, tract & field, running and jogging); tram tours and educational tours; computer data center; emergency fallout shelter; medical laboratories and other types of science laboratories; training and learning facility for geologists and other scientists; automobile parking areas, public and private; and on-line order fulfillment centers. “

As well as amend condition #1 as the following:

- “1. The development shall not exceed the following:*
- a) 225,000 square feet of gross floor area in office use on the surface;*
 - b) 20,000 square feet of gross floor area in retail use of the surface;*
 - c) 275,000 square feet of gross floor area in general warehousing and light industrial use on the surface;*
 - d) 1,730,000 square feet of gross floor area of all uses permitted in underground pursuant to LDC Chapter 4, Part 2.53”*

The applicant is proposing to modify condition #1.d) regarding the square footage of underground space to allow for an additional 970,000 square feet of underground space which will bring the total underground space to 2,700,000. There will be no boring involved as the underground space already exists. All construction within the underground space will have to meet the building code.

STAFF FINDING

Based upon the information in the staff report and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the LDC for a Conditional Use Permit.

The applicant is not proposing any changes to the allowed uses. The modification is to only expand the underground space from 1,730,000 square feet to 2,700,000 square feet. There will be no underground digging or boring involved with the additional square footage. The applicant is meeting all the standards except for item D:

D. Certification of adequate surface support to prevent cave-ins and subsidence prepared by a professional engineer registered in Kentucky shall be submitted at the time of application. Such certification may provide for exceptions or conditions which must be adhered to as a condition of Conditional Use Permit approval and must have been dated within the past three (3) years.

There are letters from engineers regarding the space dated back to 1988 but staff was unable to find anything recent.

TECHNICAL REVIEW...

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

The applicant held a neighborhood meeting on the property on July 10th, 2023 and 8 people attended.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT from 4.2.52 for Underground Space:

4.2.52 Underground Space

Use of underground space may be permitted upon the granting of a Conditional Use Permit and may be located beneath any surface zoning district provided that the permit shall apply only to the subsurface and shall not affect the zoning district or districts designated for the surface above the underground space and provided that the vehicular access points entering and exiting the underground space shall be classified in one of the following districts: M-1, M-2, M-3, PEC, PRO, C-M, C-2, or EZ-1.

The following uses of underground space may be permitted upon the granting of a Conditional Use Permit:

- Any use permitted by right in the zoning district controlling the primary vehicle entrance.
- Any use permitted by Conditional Use Permit in the zoning district controlling the primary vehicular entrance. Such use shall comply with the listed requirements for that specific conditional use.
- Removal of previously mined materials
- Public and private gatherings and events (including, but not limited to, a holiday light show, fundraising events, receptions, weddings, galas, catered events, banquets, conventions, exposition building, etc.).
- Concerts and recitals.
- Recreational and athletic uses (including but not limited to paintball, soccer, volleyball, baseball, zip-line, rock climbing, track & field, running & jogging.)

- Tram tours and educational tours.
- Computer data center.
- Emergency fallout shelter.
- Medical laboratories and other types of science laboratories.
- Training and learning facility for geologists and other scientists.
- Automobile parking areas, public and private.
- On-line order fulfillment centers

Staff: No Changes proposed.

The granting of a Conditional Use Permit shall be subject to the following listed requirements:

A. Applicant shall furnish to the Board of Zoning Adjustment proof of subsurface ownership rights at the time of application.

Staff: Applicant is aware of this requirement.

B. Any materials stored or operations conducted therein shall be in accordance with all applicable governmental regulations, including Metropolitan Sewer District, Air Pollution Control District, Kentucky Cabinet for Natural Resources and Environmental Protection, or the Federal Environmental Protection Agency.

Staff: Applicant is aware of this requirement.

C. A specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt, or other debris onto any public roadway shall be reviewed and approved by the Jefferson County Engineer or City of Louisville Department of Public Works prior to the public hearing.

Staff: Applicant is aware of this requirement.

D. Certification of adequate surface support to prevent cave-ins and subsidence prepared by a professional engineer registered in Kentucky shall be submitted at the time of application. Such certification may provide for exceptions or conditions which must be adhered to as a condition of Conditional Use Permit approval and must have been dated within the past three (3) years.

Staff: Staff has not received any certification regarding surface support for the proposed areas. Board of Zoning Adjustment will need to discuss this requirement. There are letters from engineers regarding the space dated back to 1988.

E. Where applicable, underground space must have a valid building permit to develop a habitable underground building and to qualify for a certificate of occupancy.

Staff: Applicant is aware of this requirement.

F. The entrances to all Underground Space sites shall be through property owned or controlled by the owners or operators of the underground space. Such entrances shall be on property properly zoned to contain the uses developed within the underground space.

Staff: Applicant is meeting this requirement.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **MODIFIED CONDITIONAL USE PERMIT** with **PROPOSED CONDITIONS OF APPROVAL**

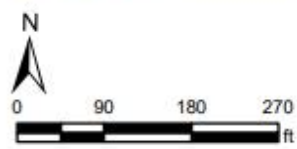
NOTIFICATION

Date	Purpose of Notice	Recipients
7/10/23	Hearing before BOZA	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District ____
7/10/23	Neighborhood Meeting	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District ____
7/12/23	Hearing before BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Photos
4. Proposed Plan
5. Previously Approved Plan
6. Proposed Conditions of Approval

2. Aerial Photograph



Monday, July 17, 2023 | 11:04:56 AM



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This map is not a legal document and should only be used for general reference and identification

3. Site Photos

Entrance from Taylor Avenue and Entrance into underground space



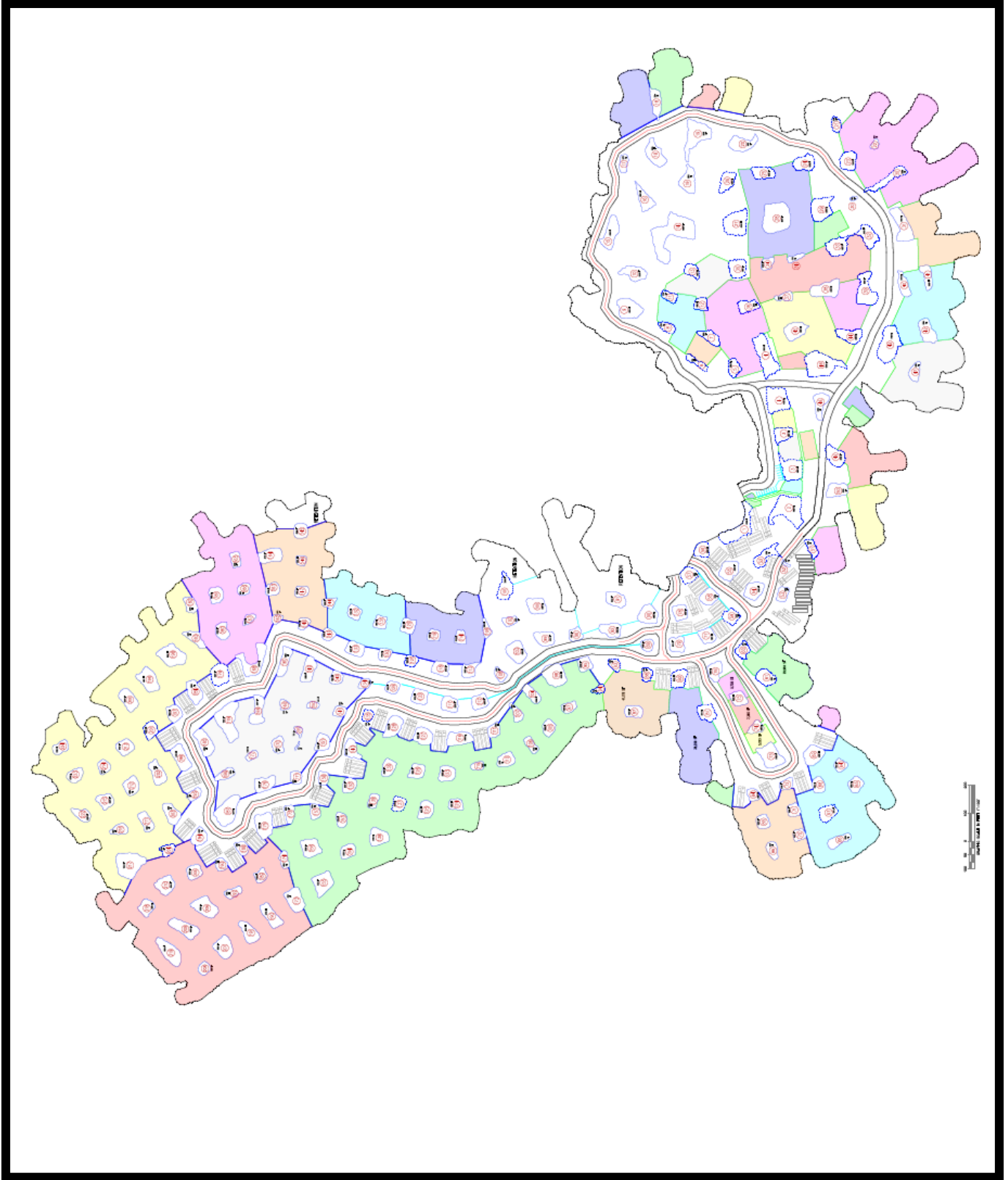
Other Entrances



Surrounding Properties on Taylor Avenue:



4. Proposed Plan



6. **Proposed Conditions of Approval**

1. The development shall not exceed the following:

- a) 225,000 square feet of gross floor area in office use on the surface;
- b) 20,000 square feet of gross floor area in retail use of the surface;
- c) 275,000 square feet of gross floor area in general warehousing and light industrial use on the surface;
- d) ~~1,730,000~~ **2,700,000** square feet of gross floor area of all uses permitted in underground pursuant to LDC Chapter 4, Part 2.53