

ZONING ORDINANCE NO: 2017-22

AN ORDINANCE OF THE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING THE CLEVELAND MUNICIPAL CODE TITLE 14 CHAPTER 2 TO ESTABLISH A PLANNED UNIT DEVELOPMENT (PUD) ZONING DISTRICT KNOWN AS "PUD 13" ON CERTAIN PROPERTY ON CERTAIN PROPERTY LOCATED NEAR PAUL HUFF PARKWAY (Tax Map 34I, Group B, Parcel 14.00) AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE ZONING PLAN AND ZONING MAP FOR PUD 13; MAKING VIOLATIONS OF THE ORDINANCE UNLAWFUL AND PROVIDING FOR PENALTIES; ESTABLISHING A LIST OF PERMITTED USES; ESTABLISHING CONDITIONS FOR MITIGATION OF NOISE AND VIBRATION; ESTABLISHING SITE PLAN REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR TRAFFIC CIRCULATION ON AND ADJACENT TO THE SITE AND PARKING, FIRE LANES, AND SERVICE AND DELIVERY VEHICLES; ESTABLISHING REQUIREMENTS FOR IMPERVIOUS AREAS, STORMWATER MANAGEMENT, LANDSCAPING, TREE PRESERVATION, BUFFERING, LIGHTING; ESTABLISHING REQUIREMENTS FOR GENERAL APPEARANCE, SIGNAGE AND OUTDOOR DISPLAYS; ESTABLISHING REQUIREMENTS FOR LITTER AND SOLID WASTE CONTROL AND DRAINAGE STRUCTURE MAINTENANCE; STATING RESPONSIBILITY FOR COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS; REQUIRING PROPER SUBDIVISION AND SITE PLANNING; REQUIRING A PUD DEVELOPMENT PLAN; PROVIDING FOR TIME LIMITS AND POSSIBLE REVERSION TO THE FORMER ZONING CLASSIFICATION; PROVIDING FOR ERRORS AND OMISSIONS AND POSSIBLE FUTURE REVISIONS TO THE PUD; COMMUNICATING THE BINDING EFFECT OF THE ORDINANCE UPON OTHERS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS the City of Cleveland, Tennessee, hereinafter "City", desires orderly land development in furtherance of the public welfare and has adopted the Planned Unit Development, hereinafter "PUD", process as an alternative development standard whereby to accomplish such development; and

WHEREAS City's 2013 Comprehensive Plan future land use element anticipated market-based redevelopment of the area containing the subject property in a context that included access management planning along Paul Huff Parkway, safety and congestion related improvements along Mouse Creek Road, and reconfiguration of the existing street network to support the redevelopment and proper traffic circulation; and

WHEREAS the aforementioned Comprehensive Plan recommendations can best be achieved by working in coordination with property owners in site planning, access to adjacent or nearby major streets including Paul Huff Parkway and Mouse Creek Road, and the design of new or re-configured internal streets.

WHEREAS it is the desire of the property owner(s), hereinafter “Developers”, to have the flexibility of the PUD process in order to work with the City and adjacent property owners who are also seeking to develop or redevelop their properties in a manner that is mutually beneficial, NOW THEREFORE BE IT ORDAINED:

Section 1. ZONING PLAN AND MAP AMENDMENT. The zoning plan and map are hereby amended so as to zone the property described in Section 4 herein as “PUD 13” . PUD 13 comprises an area of adjacent properties with frontage on Paul Huff Parkway and Mouse Creek Rd, and the intention is to allow the development of commercial uses within this PUD 13 area. The uses allowed within the PUD 13 area include the following uses allowed within the City’s CH Commercial Highway zoning district: detached single-family dwellings; townhomes; duplexes, triplexes, and quadraplexes; other multi-unit residential structures; houses of worship; office parks; schools (pre-school, primary, secondary, colleges and universities, trade schools and academies, studios); daycare facilities; tourist homes, guest homes, boarding homes, and bed-and-breakfast establishments; congregate living facilities, residential care facilities, nursing homes, and the like; veterinary care facilities; medical offices and clinics; hospitals; public utilities and utility towers; information technology and communications businesses; professional offices; government offices and government facilities; finance, insurance, and real estate businesses; personal service businesses (barber shops, beauty salons, nail salons, and the like); commercial recreation and entertainment facilities; department stores and retail stores; dry cleaners; food and beverage stores; hotels and motels; restaurants with or without drive-up windows; convenience stores with or without gasoline pumps; car washes; oil change facilities; vehicle sales, rental and repairs excluding body work; building supply sales; and farm and garden supply sales. Specifically prohibited uses include outdoor firing ranges, race tracks, adult businesses or sex outlets as defined by the City’s zoning ordinance, fireworks sales, vehicle body work, outdoor flea markets and outdoor sales of used merchandise other than operable vehicles in good repair, and any other use not identified herein as being allowed.

Section 2. DEVELOPMENT STANDARDS. The development standards for the PUD 13 district are those outlined in this ordinance. Where the PUD 13 Ordinance is silent as to a particular development standard, the standard applicable in the CH Commercial Highway zoning district, if there is any such standard, shall be applied in the commercial development area. Where the PUD 13 Ordinance is silent as to a particular development standard, the standard applicable in the R3 Multi-family Residential zoning district, if there is any such standard, shall be applied in the residential development area. The respective commercial and residential development areas of PUD 13 are to be as further described herein and as illustrated in the PUD development plan.

Section 3. VIOLATIONS UNLAWFUL AND SUBJECT TO PENALTIES. Any development or use of the property described herein in manner contrary to the terms of this ordinance is a zoning violation and is unlawful, subject to the penalties prescribed by the Cleveland Municipal Code and the laws of Tennessee.

Section 4. PROPERTY DESCRIPTION

PUD 13 includes the property currently described as tax map 34I group B parcel 14.00.

Section 5. NOISE AND VIBRATION MITIGATION.

Noise and vibrations are to be managed during the construction and operation phases of PUD 13. During construction, construction-related noise, vibrations, and traffic in the PUD 13 zoning district shall be managed so as to not unduly interfere with the nearby residential uses. Developer, developer's heirs or successors or assigns, and all contractors and subcontractors will promptly comply with any directive from City to manage construction-related noise, vibrations, and or traffic. Developer and all businesses in the PUD 13 zoning district shall mitigate potential noise or vibration problems from the site by prompt compliance with any City request to adjust volume, frequency, time, or duration of any noise or vibration that the City determines would be bothersome to a reasonable person off-site. Developer and businesses in the PUD 13 zoning district shall affirmatively manage all activities on the site so as to mitigate any noise or vibration that the City determines to likely be bothersome to reasonable person off-site. If after previous requests to Developer and/or any business located in the PUD 13 zoning district concerning noise or vibrations, City determines that there is a continued persistent pattern of noise or vibration emanating from the PUD 13 district, Developer and/or any business in the PUD 13 zoning district must undertake specific appropriate management actions requested by City to mitigate the problem including, but not limited to, the following actions if applicable: reducing or eliminating outdoor music, private security to eliminate cruising or loitering on-site, etc.

Section 6. SITE PLANNING AND DEVELOPMENT COORDINATION

6.A. Conceptual Site Plan for PUD

A conceptual site plan for PUD 13 will be prepared by a Tennessee licensed surveyor or design professional. The site plan shall be developed in coordination with input from City staff. This conceptual site plan is intended to be general in nature, identifying the location of the commercial and residential development within the PUD 13 area. The conceptual site plan is to identify the location of proposed entrances onto the adjacent roadways as well as right-of-way needed for turn lane improvements in these adjacent roadways (a traffic impact study may be required depending upon the extent of the proposed development impact). Site access, internal traffic circulation areas, and proposed streets would be included in the conceptual site plan. The conceptual site plan would identify an area or areas for stormwater detention based upon the anticipated impervious area within the development. The conceptual site plan would indicate areas of landscaped buffer needed to protect adjacent development in accordance with the City's landscaped buffer ordinance. The conceptual site plan will be the basis of a Developer meeting with the City and Cleveland Utilities staff to develop recommendations for Planning Commission approval. The conceptual site plan will serve as a master plan for the development of PUD 13, and a basis for coordinating street networks, etc.

6.B. Detailed Site Plans for PUD13 Development

One or more detailed site plans, consistent with the conceptual site plan, are required prior to development of any portion of the site with new commercial or residential buildings. The detailed site plan will meet the normal site plan requirements of City for commercial development or residential development, as the case may be. The reason that more than one detailed site plan may be completed for PUD 13 is that different portions of the PUD 13 area may be developed independently at different times. The detailed site plan(s) for PUD 13 will be reviewed in accordance with City's normal site plan review process except that Planning Commission approval is required for the detailed site plan.

Section 7. ACCESS, TRAFFIC CIRCULATION, PARKING, FIRE LANES, SERVICE AND DELIVERY VEHICLES.

7.A. Access

Properties within the PUD may be served by existing minor local streets. One or more minor streets such as Ellis Circle or Benton Drive are located within the PUD area. Depending upon how the Developer and owners of adjacent property choose to develop, it is possible that drivers visiting any one of several properties in PUD 13 or other adjacent property could utilize the few nearby planned access points to Paul Huff Parkway and Mouse Creek Road. The City's goal is to encourage such access possibilities through the conceptual and detailed site planning process.

7. B. Traffic Circulation, Parking, Fire Lanes, Deliveries, etc.

Driveway entrances to sites within PUD 13 shall be developed with adequate turning radii for entering and exiting vehicles, including delivery vehicles where appropriate. Internal traffic circulation and parking on sites, delivery access, service access for solid waste pick-up, etc., and fire and emergency access must be maintained in the site design and specifically addressed in detailed site planning for individual developments within PUD 13. In the event that the PUD 13 site is served by a public transit service, stopping of transit vehicles for entering or exiting passengers shall be outside the designated fire lane unless otherwise approved by the City's fire department. Any drive-through window facilities that are developed on the site, including the outparcels, shall comply with City standards with respect to vehicle stacking, etc. and shall be designed so as to minimize potential conflicts with other vehicles and pedestrians. Where transit stop areas or bicycle parking areas are provided in PUD 13, these areas will not count against impervious area limits. Parking standards shall be as otherwise required by City zoning regulations, subject to a decrease of up to 30% that may be granted by the Planning Commission in consideration of factors such as pedestrian, bicycle, and transit access, shared parking arrangements, enhanced landscaping, innovative stormwater management practices, and the like.

Section 8. IMPERVIOUS AREAS, STORMWATER MANAGEMENT, LANDSCAPING, TREE PRESERVATION, BUFFERING, LIGHTING.

8.A. Impervious Areas

An impervious area calculation is to be included in detailed site plans for the PUD 13 area. The impervious area of the site is understood to include the foot prints for all structures on the site as well as other paved or concrete areas that do not readily absorb water, generally that which is not greenspace. The impervious area limit in PUD 13 is 80%. Areas devoted to bike lanes, sidewalks which provide pedestrian access to Paul Huff Parkway or Mouse Creek Road, transit stop areas will not be counted toward the 80% impervious limit. A street designed in cooperation with adjacent and nearby property owners and the City which provides a continuous connection between Paul Huff Parkway at Peerless Road Extension and Mouse Creek Road will not be counted toward the 80% impervious limit.

8.B. Stormwater Management

Development within the PUD13 area must meet the City's stormwater regulation requirements. In conjunction with each detailed site plan for development within PUD 13, a drainage plan must be prepared by a professional engineer and approved by the City Engineer prior to development of the site. For purposes of stormwater management, the PUD 13 area will be regarded as an area under a common plan of development and a Notice of Intent (NOI) is required before development of any portion of the site.

8.C. Landscaping

Landscaping serves a variety of purposes and it is a requirement of both the zoning regulations and the stormwater management regulations. Landscaping fulfills a Best Management Practice (BMP) requirement of the stormwater regulations. A landscaping plan shall be submitted with all detailed site plans for the PUD 13 area. The landscaping for the site shall be in accordance with a landscape plan prepared by a Tennessee registrant (engineer, architect, or landscape architect) and approved by the City. The design, installation, and maintenance of the landscaping shall meet the requirements of this ordinance and the City's regulations regarding landscaping. Landscaping shall be provided adjacent to all roadways abutting the site and internal areas within the parking lots and adjacent to buildings. Landscaping shall be professionally installed and maintained in perpetuity by the Developer and all heirs, assigns, and successors in title. Maintenance shall include irrigation, fertilization, pest and disease control, mowing, raking, replacement of dead or diseased plants, and other such activities as may be appropriate to a high quality professionally maintained landscape.

8.D. Tree Preservation

A variety of land cover exists within the PUD 13 area and in nearby properties. In general, mature tree cover creates shade, provides habitat, reduces erosion, provides for

effective stream buffer areas, promotes water quality, etc. Re-subdivision of property and site planning concerns with building pads, drainage, and location of streets may indicate removal of existing trees. However, City's Tree Preservation Ordinance will be looked for guidance in the preservation of large trees where possible and where these could be incorporated into buffer areas. The Planning Commission may reduce trees preservation requirements that would otherwise impact PUD 13 if it deems such a reduction appropriate as part of the detailed site plan approval.

8.E. Buffering

The City has a buffering ordinance that is to protect less intensive land uses, e.g. residential, from more intensive land uses, e.g. commercial, that locate on adjacent properties. Buffering for residential properties external to the PUD shall at a minimum adhere to the requirements of the buffering ordinance within the zoning regulations; however, the Planning Commission may approve alternative transitional buffering arrangements for residential property for which there has been a documented non-residential land use planning effort. Developer and all heirs, assigns, and or successors in title shall take particular care to provide and maintain a densely landscaped buffer that mitigates the intrusion of noise, light, and the view of the proposed commercial development in adjoining residential areas.

8. F. Lighting

As part of each detailed site plan for development in PUD 13, a plan shall be provided for the exterior lighting of buildings, parking lots, signs, etc., that demonstrates the buffering of adjacent residential areas, and the mitigation of glare or distraction for adjacent roadways. Outdoor lighting for parking and sidewalk areas are to minimize light intrusion into nearby residential areas; and other exterior lighting and lighted surfaces are to be designed so as to minimize shining or reflecting into the aforementioned residential areas. Exterior lighting will also be designed in a way that mitigates any glare that would be encountered by motorist on adjacent roadways. Where it is necessary to maintain lighting for security, this lighting will be designed such that escape of lighting onto adjoining residential property is minimized. The lighting plan should include sufficient photometric detail to determine compliance with this ordinance.

Section 9. GENERAL APPEARANCE, SIGNAGE, AND OUTDOOR DISPLAYS.

9.A. General Appearance

Development within the PUD 13 area is to have a high quality appearance. In the commercial development of the PUD 13 area, it is intended that the level of architectural amenity and detail, including quality and cost of materials and craftsmanship, will meet or exceed that found in Cleveland's better commercial developments. The residential development area should achieve the highest quality appearance possible for the price level of units to be produced. Specific designs, color choices, and materials are not prescribed by this ordinance but it is expected that the quality of appearance would be

consistent with better quality and comparably priced commercial areas and residential areas found in other communities. Illustrative proposed building elevations and landscaping plans will be considered together by the Planning Commission in order to determine that the proposed development is consistent with these general appearance requirements.

9.B. Signage Plan

When a detailed site plan is prepared for a development within the PUD 13 area it is to include a signage plan for primary signs, such as ground signs and wall signs. The signage plan is to identify the type, size, and general location of the proposed sign(s). The signage plan will demonstrate conformity with the City's sign regulations where those are not otherwise modified by this section. The Planning Commission may consider proposals for innovative grouping of signs other than billboards for development within PUD 13 and adjacent properties and approve such as part of the detailed site plan approval. A primary City concern will be to maintain the high-quality appearance of the area as part of the Exit 27 gateway to Cleveland.

9.C. Outdoor Displays

Outdoor displays of merchandise and outdoor storage of goods and merchandise, including but not limited to materials stored in trailers or shipping containers, is prohibited within 50 feet of any right-of-way. In no event shall any display or storage of merchandise be configured so as to impede the visibility of motorists within or adjacent to the subject property.

Section 10. LITTER, SOLID WASTE, AND DRAINAGE STRUCTURE MAINTENANCE.

The method of solid waste disposal for each use throughout the project site shall be as approved by the City's Director of Public Works. Dumpsters shall be on a concrete pad and shall be screened by a masonry enclosure. Storage for inedible fats or greases shall likewise be enclosed and, if adjacent to a dumpster, shall be separated from the dumpster by a concrete block wall. Litter and debris shall be removed from the parking lots and grounds throughout the project site on a regular basis such that these materials do not accumulate noticeably on-site or migrate to surrounding property. Removal of litter and debris shall include the removal of such materials from drainage structures and other areas where accumulations may occur. Maintenance of drainage structures including removal of sediment, debris, and intrusive vegetation, such that these drainage structures continue to function as designed shall be the continuing responsibility of the developer, or its assigns or successors in title, and shall include effective control of algae, mosquitoes, and other such concerns as may occur with wet stormwater detention areas; such control by the developer will be monitored by the City and shall include technically appropriate means that may include mechanical aeration, application of chemicals, and/or other means. Mechanical sweeping of the parking lot and driveway areas shall be performed regularly by the Developer to control dirt, litter, and debris.

Section 11. SETBACKS, BUILDING HEIGHTS, AND DENSITY

Building setbacks, height limits, and lot dimensions for the commercial development area of PUD 13 shall be as designated for the CH zoning district except as otherwise approved by the Planning Commission as part of the detailed site plan approval process. Likewise, residential lot sizes, building heights, and setbacks shall be as required for the R3 residential zoning district unless otherwise modified by the Planning Commission. However, the setbacks on the internal streets, rather than following the CH or R3 zoning, shall be 20 feet. Structures with overhangs such as canopies or other cantilevered features may be within 5 feet of Mouse Creek or Paul Huff Parkway but no closer than 20' from the edge of pavement unless deemed a safety hazard by the City's Transportation Engineer. Building Heights for lots may be adjusted by the Planning Commission to meet the needs of the proposed development. Density of residential development may be no greater than one unit per 3500 square feet of the entire 20 acre site.

Section 12. COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS.

The Developer, and its assigns or successors in title, is responsible for obtaining all federal, state, and local permits required for the construction of the proposed shopping center and for construction on the outparcels and other construction on or adjacent to the site for which the Developer is responsible. In the event that there are state or federal agency permit requirements arising from PUD 13 development of this site, such as the off-site mitigation for impacts on a blue-line stream as required by the Tennessee Department of Environment and Conservation (TDEC), the Developer is responsible for those permit requirements. If a state or federal agency causes the City of Cleveland to incur costs to comply with any permit requirements for the PUD development of this site, the Developer shall reimburse those costs to the City. The Developer and its assigns or successors in title shall carry out the construction on the project site in compliance with all applicable ordinances of the City of Cleveland, Tennessee, and also in compliance with applicable federal and state laws. Buildings shall be designed and constructed in accordance with adopted building codes and shall not be occupied until final inspections are complete and certificates of occupancy have been issued (permission for limited use of building after substantial completion of construction for fixture installation, furnishing, store stocking, employee training and the like may be granted by the City's Building Official and such permission shall not be unreasonably withheld). Failure to develop, use, or maintain the subject property other than in conformity with all of the requirements of this ordinance is unlawful and shall be deemed a violation of the City's zoning ordinance and a nuisance subject to the penalties described in the zoning ordinance and any increased fine as may be allowed by state law.

Section 13. SUBDIVISION AND SITE PLANNING OF OUTPARCELS.

The aggregation of existing parcels into the development sites needed for the various developments within PUD 13 is anticipated to require the subdivision or re-subdivision of land. In order to accomplish this, the Developer is required to prepare a preliminary and final plat for approval by the Cleveland Municipal Planning Commission, and record the final plat(s) once approved. The platting of land into the proper parcels is a necessary precursor to the approval of the detailed site plan for the portion of PUD 13 in question. Such plat(s) should include the provision of right-of-way for any proposed future road improvements that are planned as the PUD 13 project progresses. Platting is to be carried out in accordance with the adopted subdivision regulations.

Section 14. PUD DEVELOPMENT PLAN.

The conceptual site plan and related drawings attached hereto or referenced herein as well as the terms and conditions of this ordinance will comprise the development plan for PUD 13. Detailed site plans as referred to in this ordinance are required to carry out the PUD 13 development and will be considered as part of the development plan when these are subsequently approved by the Planning Commission. It is understood that the owners of the individual properties within the development are each responsible for the compliance of their respective properties with the terms of this ordinance. The owners of the respective properties are expected to work cooperatively toward the achievement of the common development plan for this PUD 13 but a violation by one landowner will not constitute a violation by another landowner. However, joint responsibility may be established for jointly used and maintained facilities that may be incorporated into the detailed site plan(s).

Section 15. TIME LIMITS AND POSSIBLE REVERSION TO FORMER ZONING.

The developer must have carried out a substantial development of this project within five years from the effective date of this ordinance or the City may cause the property to revert to its former zoning classification without liability for any damages. Substantial development shall be interpreted to mean commencement of construction on at least one commercial building (hotel, restaurant, etc.) or residential structure within the PUD 13 area.

Section 16. ERRORS, OMISSIONS, AND POSSIBLE FUTURE REVISIONS TO THE PUD.

This ordinance may be amended from time to time as necessary after review by the Planning Commission and approval by the City Council subsequent to a public hearing. The Planning Commission has specific authority to review and approve detailed site plans for the development of PUD 13. Minor revisions to detailed site plans that affect a quantity or dimension by less than 30%, or which substitute a material for one of like or better quality in 30% or less of the project area, or which increase functionality by adding a feature desired in PUD 13 (e.g. sidewalk, transit stop, bike racks, etc.) can be approved

through the staff site plan review committee with the consent of the City Manager and the Planning Commission Chairperson. Errors and omissions in the PUD 13 development plan that do not constitute a material change in the development plan can be corrected in the same manner as a minor revision.

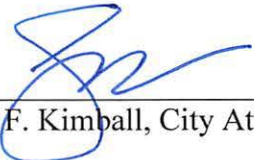
Section 17. BINDING UPON OTHERS.

It shall be the duty of the Developer to ensure compliance with all terms of this ordinance affecting construction or maintenance. Wherever this ordinance establishes a duty, responsibility, or right for the Developer, the term "Developer" is intended to encompass the purchaser(s) of the subject property and any assigns or successors in title, or any owners of record of the subject property as of the effective date of this ordinance and their heirs, assigns, or successors in title. The term "Developer" is also intended to include any holding company or other entity established for the ongoing operation and maintenance of the development of the subject property including, but not limited to, common areas, joint use or joint access areas, and undeveloped portions of the property that are intended for development. The term "Developer" is intended to include persons or firms or entities acquiring title to the subject property for the purpose of owning land and/or buildings in the PUD 13 development which they may use for a business location or rental property. The term "Developer" also applies to leaseholders who have the right to make tenant improvements on the property. It is understood that persons and entities coming under the definition of "Developer" may at some point divest themselves of their property interests in PUD 13 such that they are no longer responsible for complying with terms of this ordinance.

Section 18. CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

Where this ordinance is in conflict with existing ordinances with respect to the development of this property the terms of this ordinance shall prevail unless stated otherwise herein. In the event that any portion of this ordinance is determined to be invalid by any court of competent jurisdiction, the remaining portions of this ordinance shall remain in full force and effect. This ordinance shall take effect upon after passage and upon the execution of the development order as described above, the public convenience and necessity requiring it.

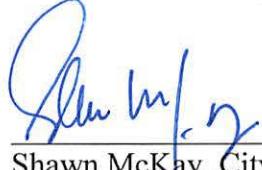
APPROVED AS TO FORM:



John F. Kimball, City Attorney



Tom Rowland, Mayor



Shawn McKay, City Clerk