

PLANNING COMMISSION MINUTES
August 16, 2018

PUBLIC HEARING

CASE NO. 17ZONE1065

Request: Change in zoning from R-7, Multi-Family Residential, to C-1, Commercial and a Detailed District Development Plan with Variances and Waivers

Project Name: Marshall Avenue Retail

Location: 101 and 103 Marshall Drive and 4425 Shelbyville Road

Owner: Triple T Shelbyville Road Properties, LLC

Applicant: Triple T Shelbyville Road Properties, LLC

Representative: Bardenwerper, Talbott & Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 7 – Angela Leet

Case Manager: Julia Williams, AICP, Planning Supervisor

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:48:19 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Kevin Young, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

David Cobb, 1325 South 4th Street, Louisville, Ky. 40208

Kelly Carls, 206 Marshall Drive, Louisville, Ky. 40207

Summary of testimony of those in favor:

02:56:34 Mr. Talbott gave a power point presentation. The plan complies with the Comprehensive Plan and the variances and waivers are justified.

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03:15:57 Mr. Young continued the power point presentation. The existing entrance is being utilized. Some pavement will be removed, gaining some green space.

Mr. Young explained the trucks routes.

03:18:51 Mr. Cobb explained the mission of Goodwill.

03:21:44 Mr. Talbott stated a brick wall is incorporated into the building and there will be an 8 foot fence.

03:47:02 Mr. Carls is here on behalf of the mayor. The applicant has been very accommodating working out issues. The community is very supportive of Goodwill.

The following spoke neither for nor against the request:

Jon Gustel, 214 Marshall Drive, Louisville, Ky. 40207

Summary of testimony of those neither for nor against:

03:52:26 Mr. Gustel said Marshall Dr. has 2 catch basins but get overwhelmed with a moderate rain, creating standing water. The green space needs to remain. Will the pipes being put in be able to handle the current and potential flooding? Mr. Young explained how the drainage will be handled.

03:58:40 Mr. Talbott and Mr. Young answered questions from the commissioners.

Deliberation

04:05:43 Commissioner Peterson stated the wall for buffering and signature entrance helps him support the plan. There's not a lot of opposition from residents or the city.

Commissioner Tomes stated the request doesn't infringe on the neighbors because there's already C-1 and C-2 lots. This is retail that's neighborhood-serving. Also, Beechwood Village supports it.

Commissioner Brown stated C-1 is appropriate but has trouble with the site design.

Commissioner Lewis supports the project.

Commissioner Smith stated she thinks Goodwill will be an addition to the neighborhood.

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Commissioner Howard stated we've already allowed intrusion into the neighborhood. Goodwill is an appropriate use and the building should be oriented toward Shelbyville Rd. Also, the drainage will be improved.

Chair Jarboe said he agrees with staff. There are issues with design and building orientation.

Commissioner Carlson said if they add some creativity to the front of the building, it may help.

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

Change in zoning from R-7, Multi-Family Residential, to C-1, Commercial on 1.1 acres

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution based on testimony heard today and the applicant's Statement of Compliance was adopted.

WHEREAS, this property has been one of the remaining decent size residential properties on Shelbyville Road surrounded by recent developments, and most recently the new BWM auto dealership across Marshall Drive; the properties have good access off Shelbyville Road and are already an "activity center" location because of the proximity to the surrounding commercial developments on both sides of Shelbyville Road; this rezoning involves a proposal to demolish three old apartment buildings and replace them with a Goodwill location; and two neighborhood meetings were held and the City of Beechwood Village supports and approves of the rezoning and development plan, as expressed by its Mayor and City Council, with the efforts to reduce and mitigate various impacts to the residential areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because, the application complies with the Neighborhood Form District description of an area characterized by *predominantly* residential uses but that also includes, at appropriate locations, a mixture of uses, such as offices, retail shops, restaurants and services to serve the residential areas; the proposed use is at a scale appropriate for the nearby neighborhood and in appropriate locations along the major Shelbyville Road corridor; this small retail center is precisely what is contemplated by the Neighborhood Form District, which will replace the aged, multi-family housing, while at

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the same time provide much improved buffering from the higher intensity use and the busy Shelbyville Road corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because, the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 15 and 16 of this Guideline because the subject property adjoins the mixture of commercial, high-density residential apartment and single-family residential uses, placing it in the activity center that already exists in and around this location; with goods and services available in close proximity to the site and the residential uses mentioned above, this small retail center adds to the vitality and sense of place among the mostly disconnected nearby neighborhoods, some of whose residents will be able to walk to this small center to work and shop; others will find it a convenient stop on their ways home; the ingress and egress will be shifted to the major arterial of Shelbyville Road and shared with the other density residential apartments to reduce curb cuts and will also be easily accessible by pedestrian and alternative modes of transportation; the rezoning and development plan expand the commercial corridor in a manner that is compatible with adjacent uses and meets Form District Guidelines; the development plan is of an intensity, size and design that is appropriate and comparable to character and scale of the surrounding uses; and it conforms to a “neighborhood center” in that this area along Shelbyville Road acts currently and will continue to compliment the area of intensity for the commercial “center” of Beechwood Village where it belongs along Shelbyville Road; and further it is similar in character and intensity to the surrounding neighborhood, appropriately located at an intersection of a major arterial and the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because, as an “activity center”, it is appropriately located along Shelbyville Road and Marshall Ave, and it is designed to be of intensity, density, size and mix of uses appropriate for a small neighborhood center; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because, the application complies with the Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 20, 21, 22, 23, 24 and 28 of this Guideline because this is a small neighborhood-serving retail center; it will have an attractive look and feel in accordance with the style and design concepts accompanying this application and in a character consistent with nearby properties; no significant noise is anticipated as the retail portion is not anticipated to have any form of late hours, but to the extent any exists it will be mitigated by an eight-foot brick wall and landscaping buffering it from the single family residential properties; lighting will follow restrictions of the Land Development Code (LDC) and thus be directed down and away from nearby residential properties, with 90 degree cut-off at property lines; loading and delivery will be located and/or screened so as to

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minimize impacts on nearby properties; and signage will be in conformance with the LDC; and the applicant has agreed to certain Binding Elements further restricting the property beyond the demands of the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because, the application complies with the Intents and applicable Policies 2, 5, and 6 of this Guideline because this site represents a small expansion at a high-traffic location to accommodate a retail center in an area already adjacent to an activity center and the major arterial of Shelbyville Road; the location has good access to transportation and where nuisances and activities of the use will not adversely affect adjacent areas with the impact mitigation and Binding Elements provided, including an attractive brick wall to further shield this area and the impacts of it from the residential property; and this use reduces costs of land development and further promotes an existing employment center with good access to a support population that will visit this retail center; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation, Transportation Facility Design and Bicycle, Pedestrian and Transit guideline because, the application complies with the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 12, 13, 16 and 18 of Guideline 7; Policies 1, 4, 5, 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 because this site is located at the intersection of the major arterial of Shelbyville Road and Marshal Drive, which has adequate traffic-carrying capacity for business growth; the road systems are adequate for this site and they address the issues on the Detailed District Development Plan (“DDDP”) accompanying this application; the DDDP accompanying this application satisfies all of the design requirements of Metro Public Works and Transportation planning which are inherent in all three of these Guidelines and provide adequate bicycle and pedestrian access to the adjoining residential areas; the DDDP received the preliminary stamp of approval from these agencies prior to public review; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because, the application complies with the Intents and applicable Policies 1, 3, 4, 6, 7, 9, 10 and 11 of this Guideline because MSD requires that post development peak rates of runoff do not exceed pre-development conditions and that adjacent properties are not adversely affected by the subject site’s new and through drainage from storm water run-off, all of which is addressed by this DDDP; underground “honeycomb” water storage will be utilized on the site for detainage; and the DDDP received MSD’s preliminary stamp of approval prior to public review; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Water Quality guideline because, the application complies with the Intents and applicable Policies 3, 5 and 8 of this Guideline because MSD has promulgated both soil

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erosion/sedimentation control regulations and even newer ones with respect to water quality; and construction plans for this center will require compliance with these regulations prior to obtaining building permits; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because, the application complies with the Intents and applicable Policies 2, 4, 7 and 8 of this Guideline because as to all of the Policies associated with air quality, they are always addressed when commuting times and distances are reduced when new activities congregate, as here, in and near an existing activity center; and new and improved pedestrian and bicycle access and is included, reducing automobile trips from the surrounding residential areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because, the application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline because as the concept landscape plan will be included in the eventual landscape plan filed with DPDS post zoning approval, that this site will not just comply with, but rather exceed, LDC landscape requirements; and as mentioned above as respects stormwater management, enhanced landscaping, screening and buffering are added next door where not required; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because, the application complies with the Intents and applicable Policies 2, 3, 4, 6 and 7 of this Guideline because this DDDP will have underground storm water detainage, access to water and utilities already existing along Shelbyville Road; it will retain the utility easements to provide access for repair and maintenance; and as a part of the Binding Elements, the applicant has agreed to replace the drainage ditch along Shelbyville Road, and install an underground pipe, subject to the conditions set forth in the Binding Elements, which will improve safety and water flow; and

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-7, Multi-Family Residential to C-1, Commercial on 1.1 acres on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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YES: Commissioners Brown, Carlson, Howard, Lewis, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Robinson

On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution based on the testimony heard today and the applicant's justification statement was adopted.

Variances:

1. Section 5.1.12.B.2.e to vary the front setback from the range of the two nearest lots along Shelbyville Road

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the trade-off of added setback for better screen and landscaping is one that benefits the City of Beechwood Village and its residential areas as much as or more so than the applicant; the applicant is going to construct an 8-foot brick wall attached to the building façade to match future the brick wall across Marshall Dr. at the new BMW site which was rezoned in 2017, along with providing matching landscaping, to make the site and entrance into Beechwood Village onto Marshall Dr. symmetrical on both sides of the street; further the variance for the street side (facing Shelbyville Road) will not have any negative affect because the variance needed is created by the property having a very large right-of-way along Shelbyville Rd., which is much larger than most of the commercial sites in this area; allowing the variance will allow the applicant to greatly enhance the entrance to the City of Beechwood Village with matching buffering and landscaping, which ultimately is the intent of the regulation, and to have symmetry and consistency in the plan with the surrounding land uses and character; and without this variance, the applicant could not commit to as much screening and landscaping; and

WHEREAS, the variance will not alter the essential character of the general vicinity because there remains a significant setback along Marshall Drive and, because of special landscaping commitments to the City of Beechwood Village made by this applicant, and an attractive streetscape along Marshall Drive; and the off-set for added screening and landscaping results in a positive net benefit for residential areas of the City of Beechwood Village; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because both the "excess" of the Marshall Drive right-of-way and most of this property's street side yard will be intensively and attractively landscaped outside with an 8 foot tall brick wall attached to the building façade in order to provide an attractive Marshall Drive streetscape and to eliminate views from Marshall Drive of the single family homes into the site; and

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WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the City of Beechwood Village has requested the screen and landscape buffer described above and on the exhibits presented with this application to the Planning Commission at LD&T and public hearing; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because it is only this side of Marshall Drive at Shelbyville Road that is presently affected by the proposed development with variances for this heavily landscaped and screened area, which apart from this screening and landscaping proposal, is an open view of an existing, already zoned car sales lot; also, the brick wall façade will be constructed to match the wall on the opposite side of Marshall Drive and to isolate the commercial property from the single-family residential properties, making it much more important to match the “infill” site to the other commercial properties along Shelbyville Road, rather than the single-family homes separated by the landscaping and brick wall; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the trade-off of added setback for better screen and landscaping is one that benefits the City of Beechwood Village as much as or more so than the applicant; and without this variance, the applicant could not commit to as much screening and landscaping; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but are the result of screening and buffering requests by the City of Beechwood Village in order to fully mitigate any potential adverse impacts;

2. Section 5.3.1.C.5 to encroach into the 30’ required non-residential to residential side setback on the northern property line

WHEREAS, the variance will not adversely affect the public health, safety or welfare because this trade off of added setback for better screen and landscaping is one that benefits the City of Beechwood Village as much as or more so than the applicant; the applicant is going to construct an 8-foot brick wall to match the wall across Marshall Dr. at the new BMW site, along with matching landscaping, to make the site and entrance onto Marshall Dr. symmetrical on both sides closely matching the BMW site across the street, and further to extend the brick wall appearance on the rear of the site to mitigate any impacts and shield the single-family homes from the commercial site and activity on Shelbyville Road; further the variance for the street side (facing Shelbyville Road) and

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rear of the site will not have any negative affect because the variance need is created by the property having a very large right-of-way along Shelbyville Rd., which is much larger than most of the commercial sites in this area and simply because of the extension of parking, which will be properly buffered with landscaping; allowing the variance will permit the applicant to greatly enhance the entrance to the City of Beechwood Village with closely matching buffering and landscaping, and also to protect the single family homes from the activity on Shelbyville Road; and

WHEREAS, the variance will not alter the essential character of the general vicinity because there remains a significant setback along Marshall Drive and because of special landscaping commitments to the City of Beechwood Village made by this applicant, notably an attractive streetscape along Marshall Drive; and the off-set of screening and landscaping results in a positive net benefit for Beechwood Village residents; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because both the “excess” of the Marshall Drive right-of-way and most of this property’s street side yard will be intensively and attractively landscaped outside of an 8 foot tall wall attached to the side façade closely matching the wall on the opposite side of Marshall Drive, in order to provide an attractive Marshall Drive streetscape and to eliminate views from Marshall Drive of the single family homes into the site; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the City of Beechwood Village has requested the screen and landscape buffer described above and on the exhibits presented with this application to the Planning Commission at LD&T and public hearing; and

WHEREAS, the Variance arises from special circumstances, which do not generally apply to land in the general vicinity because it is only this side of Marshall Drive at Shelbyville Road that is presently affected by the proposed development with variances for this heavily landscaped and screened area, which apart from this screening and landscaping proposal, is an open view of an existing, already zoned car sales lot; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because this trade off of added setback for better screen and landscaping is one that benefits the City of Beechwood Village as much as or more so than the applicant; without this variance, the applicant could not commit to as much screening and landscaping; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but are the result of screening and buffering

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requests by the City of Beechwood Village in order to fully mitigate any potential adverse impacts;

3. Section 5.3.1.C.5 to encroach into the 30' required non-residential to residential side setback on the eastern property line

WHEREAS, the variance will not adversely affect the public health, safety or welfare because this trade off of added setback for better screen and landscaping is one that benefits the City of Beechwood Village as much as or more so than the applicant; the applicant is going to construct an 8-foot brick wall to match the wall across Marshall Dr. at the new BMW site, along with matching landscaping, to make the site and entrance onto Marshall Dr. symmetrical on both sides closely matching the BMW site across the street, and further to extend the brick wall appearance on the rear of the site to mitigate any impacts and shield the single-family homes from the commercial site and activity on Shelbyville Road; further the variance for the street side (facing Shelbyville Road) and rear of the site will not have any negative affect because the variance need is created by the property having a very large right-of-way along Shelbyville Rd., which is much larger than most of the commercial sites in this area and simply because of the extension of parking, which will be properly buffered with landscaping; allowing the variance will permit the applicant to greatly enhance the entrance to the City of Beechwood Village with closely matching buffering and landscaping, and also to protect the single family homes from the activity on Shelbyville Road; and

WHEREAS, the variance will not alter the essential character of the general vicinity because there remains a significant setback along Marshall Drive and because of special landscaping commitments to the City of Beechwood Village made by this applicant, notably an attractive streetscape along Marshall Drive; and the off-set of screening and landscaping results in a positive net benefit for Beechwood Village residents; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because both the "excess" of the Marshall Drive right-of-way and most of this property's street side yard will be intensively and attractively landscaped outside of an 8 foot tall wall attached to the side façade closely matching the wall on the opposite side of Marshall Drive, in order to provide an attractive Marshall Drive streetscape and to eliminate views from Marshall Drive of the single family homes into the site; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the City of Beechwood Village has requested the screen and landscape buffer described above and on the exhibits presented with this application to the Planning Commission at LD&T and public hearing; and

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WHEREAS, the Variance arises from special circumstances, which do not generally apply to land in the general vicinity because it is only this side of Marshall Drive at Shelbyville Road that is presently affected by the proposed development with variances for this heavily landscaped and screened area, which apart from this screening and landscaping proposal, is an open view of an existing, already zoned car sales lot; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because this trade off of added setback for better screen and landscaping is one that benefits the City of Beechwood Village as much as or more so than the applicant; without this variance, the applicant could not commit to as much screening and landscaping; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but are the result of screening and buffering requests by the City of Beechwood Village in order to fully mitigate any potential adverse impacts;

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Variances: 1. Section 5.1.12.B.2.e to vary the front setback from the range of the two nearest lots along Shelbyville Road; 2. Section 5.3.1.C.5 to encroach into the 30' required non-residential to residential side setback on the northern property line; and 3. Section 5.3.1.C.5 to encroach into the 30' required non-residential to residential side setback on the eastern property line.

The vote was as follows:

YES: Commissioners Brown, Carlson, Howard, Lewis, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Robinson

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution based on the applicant's justification statement and the testimony heard today was adopted.

Waivers:

- 1. Section 10.2.4 to allow the building and parking to encroach into the required 25' property perimeter landscape buffer area on the northern property line**

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WHEREAS, the waiver will not adversely affect adjacent property owners as the proposal includes mitigation measures that will adequately screen the building and vehicles from the single family uses to the north; and

WHEREAS, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. These guidelines are not violated as the 8' masonry wall and enhanced landscaping will provide for appropriate transitions to the single family subdivision to the north; and

WHEREAS, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the encroachments are needed for the proposed building size and vehicle use area and have been adequately mitigated; and

WHEREAS, 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 with the enhanced landscaping and 8' masonry wall.

2. Section 10.2.4 to allow the building and parking to encroach into the required 25' property perimeter landscape buffer area on the eastern property line

WHEREAS, the partial waiver for the 25' perimeter LBA along the rear and east side of the site for parking spaces should be granted as they will not adversely affect the adjacent property owners; an 8 foot brick wall is being constructed along the rear of the site, as requested by the City of Beechwood Village, mitigating any impacts to the rear and the

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waiver along the east side of the site for parking is to allow a building currently on the site to be removed, again mitigating any impacts; additionally, trees and landscape buffering will be used to further mitigate any impacts; and

WHEREAS, the requested waivers will not violate the Comprehensive Plan for all the reasons set forth in the detailed Statement of Compliance, and also because all impacts are either mitigated or reduced by the construction of the 8 foot brick wall, the landscape buffering being utilized, and the removal of the building on the east side of the property for additional parking; and

WHEREAS, the extent of waivers of the regulations is the minimum necessary to afford relief to the applicant because the large right of way off of Shelbyville Road pushing the site further back and because of the effort to move the infill building as far away from the apartments on the east side and to still protect and buffer the other properties with the construction of the brick wall; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because the efforts to accommodate the neighbors' request for the wall and to also keep the building as far away from the apartments which are not behind the wall causes the need for the parking to encroach into the landscape buffer otherwise required; and

3. Section 5.5.2 to not provide the display windows, glazing, and entrances on the façade facing Marshall Ave and to not provide an entrance facing Shelbyville Road

WHEREAS, the waiver will not adversely affect adjacent property owners, but will rather benefit the adjacent residential property owners, because this location is situated at a corner with two public streets, the major arterial of Shelbyville Road and the neighborhood entrance of Marshall Drive, both having markedly different characteristics and purposes; the waiver from Section 5.5.2 is sought only for the side of the building facing Marshall Drive purposefully to create a park-like setting at the entrance to the neighborhood, mimicking the development approved for the opposite side of Marshall Drive, with sidewalks, trees, benches and a brick wall-like facade, again with the intention of buffering and shielding the residential uses from the commercial activity; the side of the building facing Shelbyville Road will comply with the window and glazing requirements as is intended; the purposes of this waiver is being requested to mitigate the impacts of the commercial activity from the neighborhood and adjacent residences, while at the same time greatly improving the entrance to the neighborhood along Marshall Drive and to develop effectively a defined "plaza" of open space, landscaping, and benches, matching

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what is being developed on the west side of Marshall Drive, to compliment and define the neighborhood center for the surrounding residential areas; and

WHEREAS, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; the waiver complies with Compatibility Guideline 3 and all applicable Intents thereunder and specifically Policies 3.3, 3.8, 3.9, 3.21, and 3.22 because the most important value that the development should advance is to maintain compatibility with and reduce impacts to the adjacent neighborhood and to provide appropriate transitions between the residential and commercial uses, which is effectively done by allowing the park-like, plaza setting, without windows and glazing, along Marshall Drive; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant to accommodate and satisfy specific requests from Beechwood Village residents, preserving and improving the neighborhood setting along Marshall Drive, while at the same time providing a focal point and visual interest for the commercial use along the more heavily travelled arterial of Shelbyville Road; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land and would create an unnecessary hardship on the applicant and surrounding residential property owners because it would not allow the compensating factors to be incorporated into the development site to transition and reduce impacts between the differing property uses;

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waivers: 1. Section 10.2.4 to allow the building and parking to encroach into the required 25' property perimeter landscape buffer area on the northern property line 2. Section 10.2.4 to allow the building and parking to encroach into the required 25' property perimeter landscape buffer area on the eastern property line and 3. Section 5.5.2 to not provide the display windows, glazing, and entrances on the façade facing Marshall Ave and to not provide an entrance facing Shelbyville Road.

The vote was as follows:

YES: Commissioners Brown, Lewis, Peterson, Smith, Tomes and Jarboe

NO: Commissioner Carlson and Howard

NOT PRESENT AND NOT VOTING: Commissioner Robinson

Detailed District Development Plan and Binding Elements

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On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution based on the applicant's Statement of Compliance and the testimony heard today was adopted.

WHEREAS, this property has been one of the remaining decent size residential properties on Shelbyville Road surrounded by recent developments, and most recently the new BWM auto dealership across Marshall Drive; the properties have good access off Shelbyville Road and are already an "activity center" location because of the proximity to the surrounding commercial developments on both sides of Shelbyville Road; this rezoning involves a proposal to demolish three old apartment buildings and replace them with a Goodwill location; and two neighborhood meetings were held and the City of Beechwood Village supports and approves of the rezoning and development plan, as expressed by its Mayor and City Council, with the efforts to reduce and mitigate various impacts to the residential areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because, the application complies with the Neighborhood Form District description of an area characterized by *predominantly* residential uses but that also includes, at appropriate locations, a mixture of uses, such as offices, retail shops, restaurants and services to serve the residential areas; the proposed use is at a scale appropriate for the nearby neighborhood and in appropriate locations along the major Shelbyville Road corridor; this small retail center is precisely what is contemplated by the Neighborhood Form District, which will replace the aged, multi-family housing, while at the same time provide much improved buffering from the higher intensity use and the busy Shelbyville Road corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because, the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 15 and 16 of this Guideline because the subject property adjoins the mixture of commercial, high-density residential apartment and single-family residential uses, placing it in the activity center that already exists in and around this location; with goods and services available in close proximity to the site and the residential uses mentioned above, this small retail center adds to the vitality and sense of place among the mostly disconnected nearby neighborhoods, some of whose residents will be able to walk to this small center to work and shop; others will find it a convenient stop on their ways home; the ingress and egress will be shifted to the major arterial of Shelbyville Road and shared with the other density residential apartments to reduce curb cuts and will also be easily accessible by pedestrian and alternative modes of transportation; the rezoning and development plan expand the commercial corridor in a manner that is compatible with adjacent uses and meets Form District Guidelines; the development plan is of an intensity, size and design that is appropriate and comparable to character and scale of the surrounding uses; and it conforms to a "neighborhood

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center” in that this area along Shelbyville Road acts currently and will continue to compliment the area of intensity for the commercial “center” of Beechwood Village where it belongs along Shelbyville Road; and further it is similar in character and intensity to the surrounding neighborhood, appropriately located at an intersection of a major arterial and the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because, as an “activity center”, it is appropriately located along Shelbyville Road and Marshall Ave, and it is designed to be of intensity, density, size and mix of uses appropriate for a small neighborhood center; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because, the application complies with the Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 20, 21, 22, 23, 24 and 28 of this Guideline because this is a small neighborhood-serving retail center; it will have an attractive look and feel in accordance with the style and design concepts accompanying this application and in a character consistent with nearby properties; no significant noise is anticipated as the retail portion is not anticipated to have any form of late hours, but to the extent any exists it will be mitigated by an eight-foot brick wall and landscaping buffering it from the single family residential properties; lighting will follow restrictions of the Land Development Code (LDC) and thus be directed down and away from nearby residential properties, with 90 degree cut-off at property lines; loading and delivery will be located and/or screened so as to minimize impacts on nearby properties; and signage will be in conformance with the LDC; and the applicant has agreed to certain Binding Elements further restricting the property beyond the demands of the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because, the application complies with the Intents and applicable Policies 2, 5, and 6 of this Guideline because this site represents a small expansion at a high-traffic location to accommodate a retail center in an area already adjacent to an activity center and the major arterial of Shelbyville Road; the location has good access to transportation and where nuisances and activities of the use will not adversely affect adjacent areas with the impact mitigation and Binding Elements provided, including an attractive brick wall to further shield this area and the impacts of it from the residential property; and this use reduces costs of land development and further promotes an existing employment center with good access to a support population that will visit this retail center; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation, Transportation Facility Design and Bicycle, Pedestrian and Transit guideline because, the application complies with the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 12, 13, 16 and 18 of Guideline 7; Policies 1, 4, 5, 7, 9, 10 and 11 of Guideline 8;

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and Policies 1, 2, 3 and 4 of Guideline 9 because this site is located at the intersection of the major arterial of Shelbyville Road and Marshal Drive, which has adequate traffic-carrying capacity for business growth; the road systems are adequate for this site and they address the issues on the Detailed District Development Plan (“DDDP”) accompanying this application; the DDDP accompanying this application satisfies all of the design requirements of Metro Public Works and Transportation planning which are inherent in all three of these Guidelines and provide adequate bicycle and pedestrian access to the adjoining residential areas; the DDDP received the preliminary stamp of approval from these agencies prior to public review; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because, the application complies with the Intents and applicable Policies 1, 3, 4, 6, 7, 9, 10 and 11 of this Guideline because MSD requires that post development peak rates of runoff do not exceed pre-development conditions and that adjacent properties are not adversely affected by the subject site’s new and through drainage from storm water run-off, all of which is addressed by this DDDP; underground “honeycomb” water storage will be utilized on the site for detainage; and the DDDP received MSD’s preliminary stamp of approval prior to public review; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Water Quality guideline because, the application complies with the Intents and applicable Policies 3, 5 and 8 of this Guideline because MSD has promulgated both soil erosion/sedimentation control regulations and even newer ones with respect to water quality; and construction plans for this center will require compliance with these regulations prior to obtaining building permits; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because, the application complies with the Intents and applicable Policies 2, 4, 7 and 8 of this Guideline because as to all of the Policies associated with air quality, they are always addressed when commuting times and distances are reduced when new activities congregate, as here, in and near an existing activity center; and new and improved pedestrian and bicycle access and is included, reducing automobile trips from the surrounding residential areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because, the application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline because as the concept landscape plan will be included in the eventual landscape plan filed with DPDS post zoning approval, that this site will not just comply with, but rather exceed, LDC landscape requirements; and as mentioned above as respects stormwater management, enhanced landscaping, screening and buffering are added next door where not required; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because, the application complies with the Intents and applicable Policies 2, 3, 4, 6 and 7 of this Guideline because this DDDP will have underground storm water detainage, access to water and utilities already existing along Shelbyville Road; it will retain the utility easements to provide access for repair and maintenance; and as a part of the Binding Elements, the applicant has agreed to replace the drainage ditch along Shelbyville Road, and install an underground pipe, subject to the conditions set forth in the Binding Elements, which will improve safety and water flow; and

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following 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 City of Beechwood Village for review and 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. Signage:
 - a. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site. Temporary way finding signs, construction-related signs or directional signs are permitted. Plans for all proposed freestanding signage shall be submitted to the City of Beechwood Village for review, with it being understood that the primary monument sign will be approximately 4 feet tall and 12 feet long, a donation sign will be approximately 10 inches tall and up to 12 feet long, a building sign with logo, and size appropriate directional signs are permitted.
 - b. No median, street signage or other structure in the City of Beechwood Village right of way can be installed or removed without review and coordination with the City of Beechwood Village.

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- c. The property owner shall be responsible for reimbursing the City of Beechwood Village for legal fees incident to any and all necessary signage enforcement on the City's part.
 - d. Appropriate signs will be installed clearly indicating no drop-offs of donated goods after operating hours attached to the building or structure. Further, the applicant will make reasonable efforts to remove any donated goods dropped-off in violation of this directive.
- 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) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, 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. 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.

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6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.

7. 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. Should the property owner lease the property to an entity operating something other than a Goodwill store, the property owner will use good faith, reasonable efforts to find a tenant acceptable to the City Council of Beechwood Village.

8. No overnight idling of trucks shall be permitted on-site. No service vehicles or trucks shall use the streets in Beechwood Village.

9. Hours of Operation:
 - a. Commercial Deliveries: 7am-7pm Monday- Friday; 9am-5pm Saturday and Sunday
 - b. Trash Pick-Up: 7am-6pm Monday-Friday
 - c. Construction: 7am-7pm Monday- Friday; 8am-5pm Saturday and Sunday
 - d. Business Hours: 9am- 9pm Monday-Saturday; Sunday 10am-6pm.

10. The only permitted use of the subject property shall be a retail store. Any changes in use shall be reviewed and approved by the Planning Commission or its designee. Thirty (30) days advance notice of any Planning Commission or designee decision shall be given to the City of Beechwood Village and 1st tier adjacent property owners.

11. The applicant shall provide a copy of the plan and application to the City of Beechwood Village, within one week of filing to Planning and Design Services, of all Revised Detailed District Development Plans, Amendment to Binding Elements, Change of Zoning or Conditional Use Permit requests, Waivers, and Variances.

12. Dumpster shall be enclosed as required by the Land Development Code, be lidded and the lid shall not be made of metal. The dumpster shall be placed as close to Shelbyville Road as allowed by the Planning Commission and shown on

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the DDDP. The applicant shall not have a trash compactor on the site. No trash compactor will be installed on the site.

13. Landscaping shall be installed pursuant to the "Detailed Landscape Plan" presented at the August 16, 2018 Planning Commission hearing and presented to the City of Beechwood Village on January 16, 2018. Any and all landscaping shall be maintained, including mowing, trimming, pruning, replacing all bushes, trees, grass, and or plantings. Any replacement landscaping shall be of similar quality and size as approved by Planning and Design services staff. All landscaping approved by the Planning and Design Services staff shall be installed following the exact specifications of the approved final landscaping plan.

14. Lighting:

- a. At the time a building permit for the parking lot construction is requested, the applicant/developer shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the Land Development Code and shall be maintained accordingly thereafter. No permits shall be issued unless such certification statement is submitted.
- b. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall assure that no light source is visible off site. Lighting levels attributable to the fixtures located on the subject site shall not exceed 0.25 foot candles at the property line. Light shall be LED or equivalent, no more than 4000 Kelvin or its equivalent. Light poles shall be no taller than 14 foot from ground level to the top of the light apparatus.

15. Proper drainage of storm water and water run-off from site shall not overflow and encroach onto neighboring private property owners, City of Beechwood Village or its right of way. If water encroaches or ponds onto said properties, land owner shall take immediate action to remedy the situation. Storm water shall drain according to MSD and in accordance with MSD approved construction documents. Any storm water runoff is sole responsibility of property owner. Owner shall take appropriate actions to meet recommended site drainage specifications as approved by MSD.

16. An 8-foot tall (at top of columns) masonry wall shall be installed as located on the DDDP pursuant to the "brick wall detail" (except for height as noted herein) presented at the August 16, 2018 Planning Commission Public Hearing. The wall shall be maintained by the property owner. All reasonable efforts shall be made to have brick match the brick used in wall across Marshall Drive, if installed, and

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if not, then all reasonable efforts to match as closely as possible the brick used in the development at 4505 and 4507 Shelbyville Road which is also in Beechwood Village.

17. Construction Schedule: The applicant, developer, or property owner shall begin and complete the project in a commercially timely fashion, with the general anticipated time frames set forth below beginning no later than thirty (30) days following of approval of the plan, the passing of all appeal periods with no appeal being filed:
- a. Four (4) months to obtain all necessary permits for construction and demolition;
 - b. Two (2) months to obtain bids for project, hire a general contractor and to begin demolition and construction;
 - c. Three (3) months to complete site work and demolition;
 - d. Nine (9) months to complete construction.

The initiation of the times set forth above will begin after all governmental approvals for the rezoning and the development plan are completed, including the passing of all appeal time periods. In the event there is an appeal of the rezoning, development plan, or a legal challenge to the demolition, then the time periods shall be tolled until such appeal or challenge is completed in favor of the applicant, developer, and/or property owner. The time periods above shall also be tolled for inclement weather or other acts of God, and tolled for time periods necessary to remove any tenants from the property. In the event of any claimed violation, Beechwood Village will provide written notice and a commercially reasonable time to cure.

18. The applicant agrees to pipe the ditch along the US 60 frontage of the property, subject to necessary governmental approval, including but not limited to all appropriate governmental agencies, the Kentucky Department of Transportation and Louisville Metro Public Works and Metropolitan Sewer District (MSD). The time periods in BE #17 above may be tolled in the event there is any delay on government approvals of the ditch.
19. Building materials used on the site shall be primarily red brick consistent with the materials used in other residential and commercial buildings in the City of Beechwood Village and the roof shall be black, brown, tan, or another dark or neutral color consistent with the area of the City of Beechwood Village. In no event will the roof be white or blue.

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20. The garbage dumpster shall be placed as close to Shelbyville Road as allowed by the Planning Commission.

The vote was as follows:

YES: Commissioners Brown, Howard, Lewis, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Robinson

ABSTAINING: Commissioner Carlson

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NOTE: This case was heard out of order. It was heard first to address the applicant's continuance request.

Request: Change in zoning from R-7 Multi-Family Residential to C-1 Commercial and a Detailed District Development Plan with Variances and Waivers
Project Name: Marshall Avenue Retail
Location: 101 & 103 Marshall Drive and 4425 Shelbyville Road
Owner: Triple T Shelbyville Road Properties, LLC
Applicant: Triple T Shelbyville Road Properties, LLC
Representative: Bardenwerper, Talbott & Roberts, PLLC
Jurisdiction: Louisville Metro
Council District: 7 – Angela Leet

Case Manager: Laura Mattingly, AICP, Planner II

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and 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:

00:10:37 Laura Mattingly said the applicant has requested that this case be postponed to a date uncertain in order to allow them additional time to continue working with the Beechwood Village residents, and also address a few comments in the staff report.

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

00:11:41 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to a date uncertain.

The vote was as follows:

**YES: Commissioners Brown, Smith, Carlson, Ferguson, Tomes, Lindsey, Jarboe.
NOT PRESENT: Commissioners Lewis, Howard, and Peterson.**