

**Board of Zoning Adjustment**  
**Staff Report**  
August 3, 2020



<b>Case No:</b>	20-CUP-0042
<b>Project Name:</b>	Phuoc Hau Temple
<b>Location:</b>	1521 Penile Road
<b>Owner:</b>	The Buddhist Association, Phuoc Hau, Inc. by Nghiem Van Nguyen
<b>Applicant:</b>	Concepts21, PLLC. By Mohammad Nouri
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	# 13 – Mark Fox
<b>Case Manager:</b>	Steve Hendrix, Planning & Design Coordinator

**REQUESTS:**

Conditional Use Permit to allow a private institutional use in a single family zoning district, R-4 and a variance, (20-Variance-0080) to allow the buildings to exceed the maximum setback. The Conditional Use Permit was initially scheduled for July 20, 2020, but the Board continued this proposal, so all of the items could be heard at the same time.

**CASE SUMMARY/BACKGROUND**

The 13 acre site is located in southern Jefferson County with the Gene Snyder Freeway as its northern boundary within the Fairdale Fire Protection District. The applicant is seeking to first build a 4,800 square foot, one story residence and then a 4,000 square foot temple and a 4,800 square foot, with access from Penile Road. The site will include 82 parking spaces, natural walking paths, and rainwater collection for in house vegetable garden and plants, a water feature and use of green and sustainable materials for the new construction.

**STAFF FINDING / RECOMMENDATION**

There are five listed requirements, all have been met. 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.

**RELATED CASES**

**15CUP1045** A Conditional Use Permit to allow an earth excavation/fill, minor operation in an R-4 zoning district. Construction of an earthen berm along the rear of the site parallel with the Gene Snyder Freeway. The purpose was to create a visual barrier blocking the freeway as well as the sound. This was approved by the Board on May 16, 2016.

**TECHNICAL REVIEW**

Health Department will be required for the second phase of the development which will be the temple.

## **INTERESTED PARTY COMMENTS**

One call just seeking information.

Another call concerning notice. The required notices were sent, this particular property owner was outside of the 500 foot coverage.

A neighborhood meeting was held on September 12, 2019, eighteen people were in attendance. Discussion included the existing zoning classification, the building heights and hours of operation. There did not appear any opposition.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

### **1. Is the proposal consistent with applicable policies of the Comprehensive Plan?**

STAFF: The proposal meets all applicable policies of the Comprehensive Plan.

### **2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?**

STAFF: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

### **3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?**

STAFF: The subject property is served by existing septic system and will require Health Department approval for the second phase of the development which will be the temple. Transportation Planning and MSD have signed the submitted site plan.

### **4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested? Yes.**

Private institutional uses, except for such uses specifically regulated elsewhere in this LDC, may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, and U-N zoning districts upon the granting of a Conditional Use Permit and compliance with the listed requirements:

A. Except in the R-R zoning district, all structures, except fencing, and all off-street parking shall be at least 30 feet from any property line adjacent to an existing residential use or residential zoning district. In the R-R zoning district all structures, except fencing, shall be at least 150 feet from any property line and all off-street parking shall be at least 30 feet from any property line.

The requirement has been met.

B. The applicant must demonstrate that the impact of the traffic generated by the use can be mitigated.

Transportation has stamped the plan.

- C. Off-street parking not located within a driveway shall be located to the side or rear of the building(s). The number of required off-street parking spaces shall be determined by the Planning Director in consultation with the Director of Public Works based on the standards for the closest comparable use and on the particular parking demand and trip generation characteristics of the proposed use.  
The requirement has been met.
- D. All activities shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).  
***The applicant has been informed of this requirement.***
- E. The Board of Zoning Adjustment may set hours of operation for the institutional use in order to minimize potential negative impacts on surrounding residential properties.  
***The applicant has been informed of this requirement.***

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM TABLE 5.3.2**

Location	Requirement	Request	Variance
Penile Road	Maximum 80 feet	732 feet	652 feet

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

STAFF: The requested variances will not adversely affect the public health, safety or welfare, since MSD and Transportation have signed the submitted site plan.

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

STAFF: The requested variance will not alter the essential character of the general vicinity, since the area is rural in nature.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public, since the existing driveway entrance will be used and the residence and temple are in close proximity to the location of an existing residence which will be removed.

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

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations, since this is a rural section of the county and the proposed location is similar to where an existing residence is now located, although to be removed.

**ADDITIONAL CONSIDERATIONS:**

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

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone, due to the shape and size of the lot.

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

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, since the access entrance is 52 feet wide and extends more than 420 feet to the main portion of the property, (serving as the pole to this “flag lot”).

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

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variances and has not begun construction.

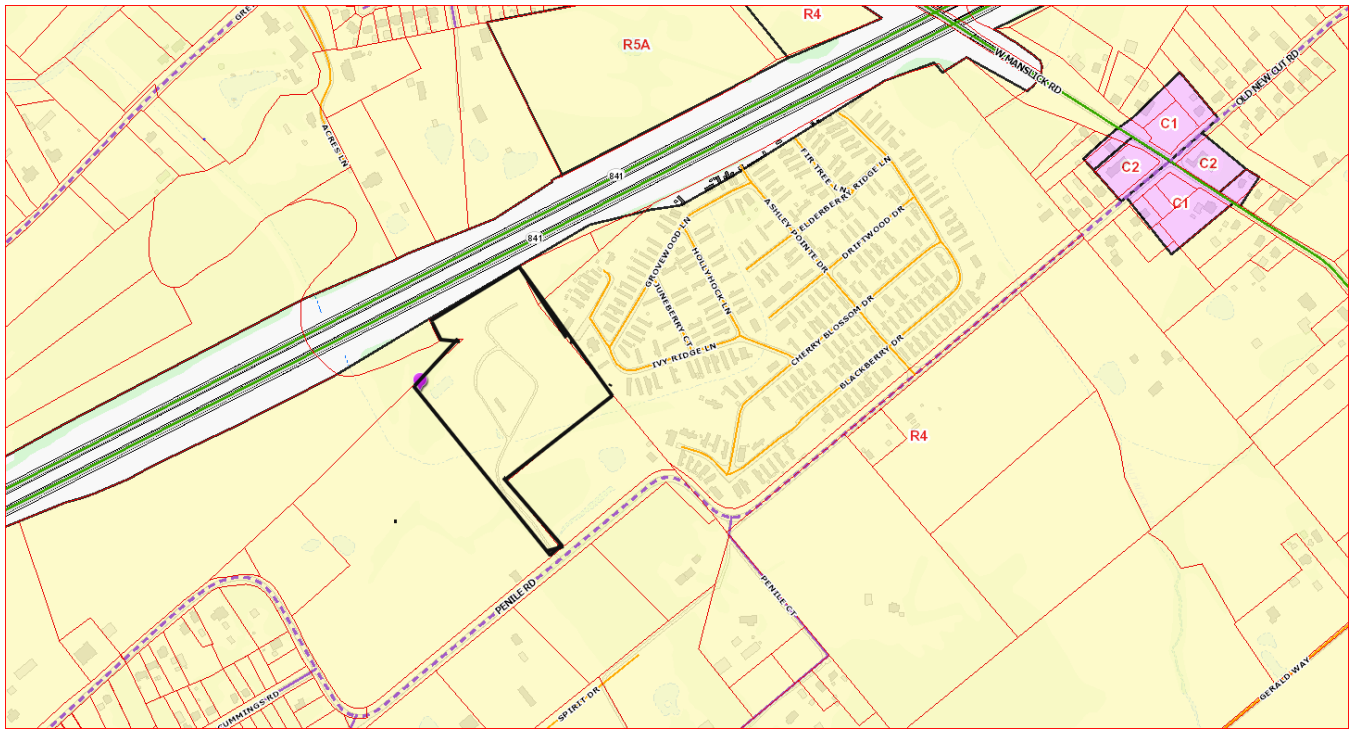
**NOTIFICATION**

Date	Purpose of Notice	Recipients
07/02/2020	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners
07/02/2020		Registered Neighborhood Groups in Council District 8
07/08/2020	Hearing before BOZA	Sign Posting

**ATTACHMENTS**

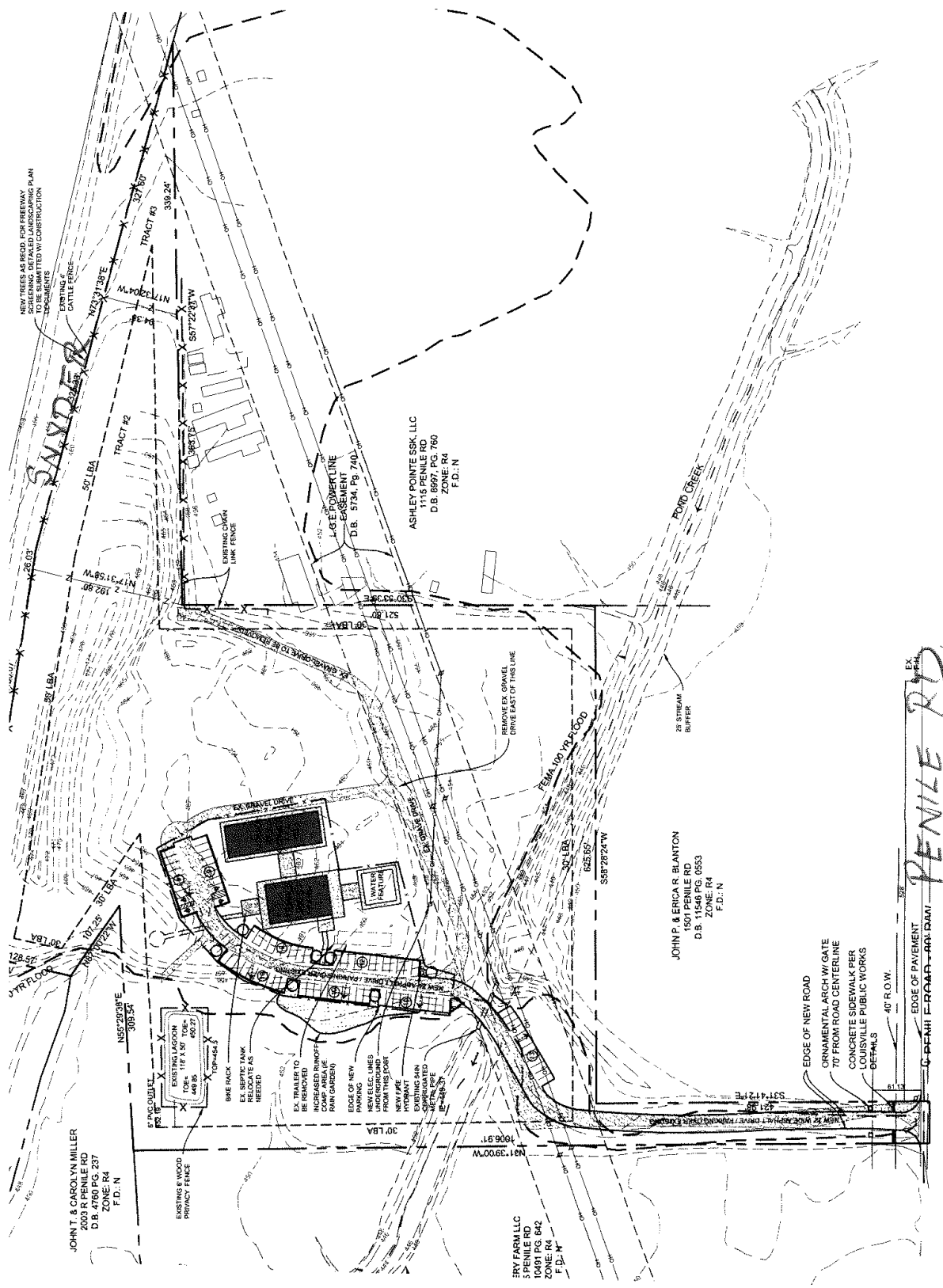
1. Zoning Map
2. Aerial Photograph
3. Site Plan (2)
4. 2040 Checklist
5. Conditions of Approval

1. **Zoning Map**

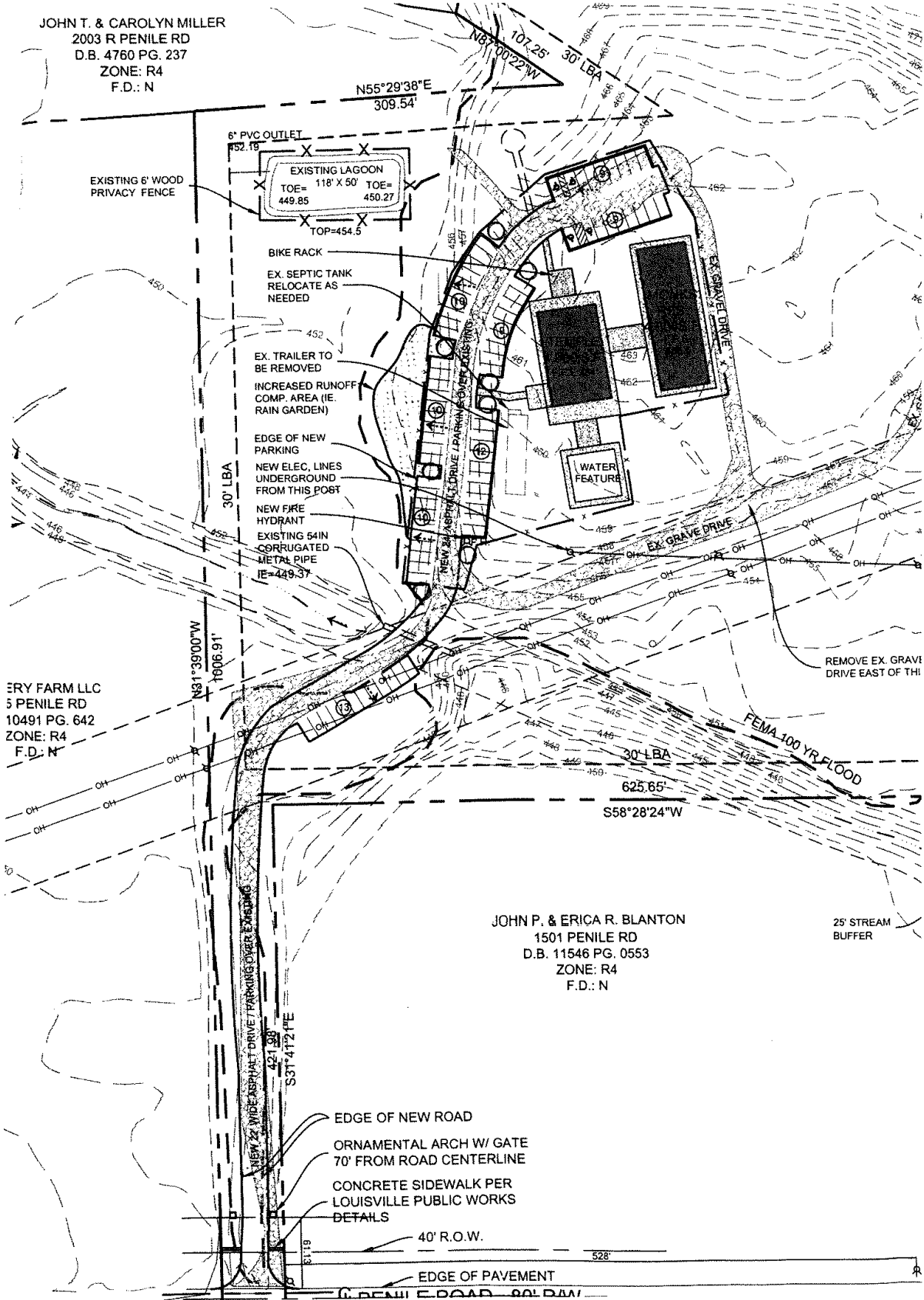


2. Aerial Photograph





JOHN T. & CAROLYN MILLER  
 2003 R PENILE RD  
 D.B. 4760 PG. 237  
 ZONE: R4  
 F.D.: N



ERY FARM LLC  
 5 PENILE RD  
 10491 PG. 642  
 ZONE: R4  
 F.D.: N

JOHN P. & ERICA R. BLANTON  
 1501 PENILE RD  
 D.B. 11546 PG. 0553  
 ZONE: R4  
 F.D.: N



**5. 2040 Checklist**

Conditional Use Permit Checklist

+ Meet policy

- Does not meet policy

+/- Meets/Does not meet some portion of policy

NA – Not applicable

NIS – Information needed

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
Community Form – Goal 1			
4.	Ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.	+	A new temple and residence on a 13 acre site.
11.	Ensure setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet Form District guidelines.	+	Both structures exceed the maximum front setback, but being a religious institution and in a rural setting seems to be appropriate. Height requirements met.

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
12.	Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes.	+	Transportation Planning has reviewed and approved the proposal.
14.	Ensure that signs are compatible with the Form District pattern and contribute to the visual quality of their surroundings. Promote signs of a size and height adequate for effective communication and conducive to motor vehicle safety. Encourage signs that are integrated with or attached to structures wherever feasible; limit freestanding signs to monument style signs unless such design would unreasonably compromise sign effectiveness. Give careful attention to signs in historic districts, parkways, scenic corridors, design review districts and other areas of special concern. For freestanding signs in multi-lot the number of signs by including signage for each establishment on the same support structure and encourage consistent design (size, style, and materials).	+	Signage to meet Land Development Code.
17.	Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	+	Transportation Planning has reviewed and approved the proposal.

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
18.	Mitigate adverse impacts of noise from proposed development on existing communities.	+	Sunday morning and other religious holidays.
19.	Mitigate adverse impacts of lighting from proposed development on nearby properties, and on the night sky.	+	Lighting will be Land Development Code compliant.
Goal 2 Community Facilities			
3.	Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	+	MSD has reviewed and approved the proposal.

#### 4. Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a private institution until further review and approval by the Board.