

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION MEETING
October 18, 2018**

A meeting of the Louisville Metro Planning Commission was held on Thursday, October 18, 2018 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, KY 40202.

Commissioners present:

Vince Jarboe, Chair
Marilyn Lewis, Vice Chair
Lula Howard
Robert Peterson
Jeff Brown
Rich Carlson
Laura Ferguson
David Tomes
Ruth Daniels (arrived at 1:10 p.m.)

Commissioners absent:

Emma Smith

Staff members present:

Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
Brian Davis, Planning & Design Manager
Jay Lockett, Planner I
Julia Williams, Planning & Design Supervisor
Joel Dock, Planner II
Dante St. Germain, Planner II
Joe Haberman, Planning & Design Manager
Jessica Wethington, Public Information Specialist
Beth Stuber, Transportation Planning
Tony Kelly, MSD
Mark Dutrow, Engineer II, Develop Louisville
Paul Whitty, Legal Counsel
John Carroll, Legal Counsel
Chris Cestaro, Management Assistant

The following matters were considered:

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APPROVAL OF MINUTES

Approval of the Minutes for the October 1, 2018 Planning Commission night hearing.

00:04:50 On a motion by Commissioner Howard, seconded by Commissioner Lewis, the following resolution was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the minutes of the meeting conducted on October 1, 2018 at 6:30 p.m. at the Shelbyhurst Campus, with the correction of one typographical error on page 3 as noted.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Jarboe, Lewis, Brown, and Howard.

NOT PRESENT: Commissioners Smith and Daniels.

ABSTAINING: Commissioner Carlson.

NOTE: Commissioner Robinson noted that he watched the video of the entire hearing although he was not present.

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CONSENT AGENDA

CASE NO. 18STREETS1017

Request: Closure of a public alley
Project Name: Brown Alley Closure
Location: 313 South 18th Street
Owner: Louisville Metro
Applicant: D & B Property Investments
Representative: Randy Brown
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith

Case Manager: Jay Lockett, Planner I

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:

00:07:17 Jay Lockett said that all adjacent property owners have given 100% consent to the proposed closure. There is no opposition or agency concerns.

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.

00:07:57 On a motion by Commissioner Tomes, seconded by Commissioner Peterson, the following resolution, based on evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed alley closure, as described in the attached legal description, be **APPROVED**.

The vote was as follows:

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

NOT PRESENT: Commissioners Smith and Daniels.

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CASE NO. 18ZONE1014

NOTE: Public Hearings were conducted on October 1, 2018 and October 15, 2018 (see associated minutes.)

Request:	<i>Deferred from public hearing October 15, 2018</i> Change in zoning from C-1 to C-2 Commercial with a Conditional Use Permit and Revised Detailed District Development Plan for golf driving range and entertainment center; Variances for setback, height and stream buffer encroachments; Waiver of landscape buffer; lighting Waiver, and consideration of lighting report and lighting height
Project Name:	TopGolf at Oxmoor Center
Location:	7900 Shelbyville Road
Owner:	WMB 2, LLC and TWB Oxmoor 2, LLC
Applicant:	TopGolf USA Louisville, LLC
Representative:	Clifford Ashburner – Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker

Case Manager: Joel Dock, AICP, Planner II

Notice of the 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.)

***See recording for verbatim Commissioners’ comments and deliberations.**

Deliberation:

00:09:03 Commissioner Tomes first discussed traffic, lighting, height, and sound. Regarding traffic, he said the studies show that there will be less impact on surrounding areas with this proposal than with the active department store. Regarding lighting, he said the lighting plan and studies show a “great reduction” in the intensity of the lighting, as well as a reduction in the height of fixtures than what is currently in the lot at Oxmoor Center. He said all lighting must comply with light trespass regulations under the Land Development Code. He noted that the closest homes to the field lights are

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approximately 1/4 mile away, and many citizens who testified in opposition are much farther away. He discussed the landscaping, both summer and winter, and how it will work to reduce noticeable light.

Commissioner Tomes noted that the property directly abutting the residential properties is currently zoned R-6 and Campus. Today, this is used as a soccer field, but could also become apartments or multi-family with no zone change.

00:16:03 Commissioner Tomes discussed the proposed variance for the height of the poles. He said the maximum is for a 150 ft. building height; but the poles are not buildings or solid structures and are not lighted. He added that these structures are at a great distance from residential areas.

00:20:34 Regarding sound issues, Commissioner Tomes said the applicant has indicated by their studies that they will comply with LDC regulations.

00:20:48 Commissioner Tomes discussed his concerns about mall failures, and the importance of using these spaces in a productive way, either through retail or entertainment.

00:22:34 Commissioner Peterson said he agreed with what Commissioner Tomes has stated. He said that the presentations made by both proponents and opponents were extremely thorough. He said he believes that the lighting will be greatly improved over what is there now. He said the applicant will be aiming the lighting down at the field, using special shielded fixtures, installing buffering and landscaping, and dimming the lights at closing time. He said he believes these measures will alleviate and mitigate any light impacts. He discussed traffic concerns. He said he agreed with Commissioner Tomes regarding the pole height and noted that the poles are not lighted. He discussed the R-6 properties between Hurstbourne and the TopGolf facility, and noted that, when these properties are developed, there will be even less of a sound and visual impact on the neighborhood. He also expressed concern about mall failures in other towns and cities.

00:28:30 Commissioner Howard itemized regulations and requirements in the Land Development Code which support this project. She noted that the site is located in the Regional Form district; the landscaping plan is "much-needed improvement"; and there will be less glare and less light trespass than allowed by the LDC. She said the waiver and variance are "necessary, and do not adversely affect the public health, safety, or welfare of the general public." She said she approves of the Conditional Use Permit and the Waiver requests.

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00:32:43 Commissioner Brown asked Ms. Howard about Part D of the Conditional Use Permit, which requires a driving range to orient away from the roadway (see page 8 of the staff report.) Ms. Howard said the area of the driving range is not going toward the street; it is still within the redevelopment area, and is more than 30 feet away from the street or the highway. She said she did not see an adverse impact. Commissioner Brown added that the applicant has applied for a Variance to exceed the maximum setback to help further mitigate any impact. Commissioner Howard said that the applicant would have 275 feet away from the setback, when only 30 feet is required. Commissioner Jarboe added that there will also be parking between the range and Christian Way. Commissioner Peterson said the netting is required to retain golf balls, and therefore supersedes Part D. Commissioner Howard said she also approves the Revised Detailed District Development Plan.

00:34:50 Commissioner Brown said he agreed with what has been said. He said his main concern was about glare, but that the lighting explanations and discussions have allayed his concerns.

00:35:47 Commissioner Lewis said she also agreed with previous Commissioners' statements and that she is satisfied that there will be no issues with traffic, noise, and lighting. She said she supports all aspects of the project. She said she spent much time reviewing the height variance request for the poles and feels it is justified for several reasons, but mostly for public safety. She said she thinks the LDC and Form district supports the project.

00:38:55 Commissioner Robinson said he also agreed with what previous Commissioners have stated. He said the entire proposal meets the Land Development Code.

00:39:24 Commissioner Carlson said he also agrees with what previous Commissioners have stated about light, noise, and traffic. He said his main concern was about noise levels, but a binding element drafted by Planning Commission staff addressed concerns. Enhanced landscaping will be beneficial for the lighting issue.

00:41:40 Commissioner Daniels said she agreed with the other Commissioners, and felt that the applicant has addressed all of the issues. The lighting has been addressed, and the landscaping should mitigate sound issues.

00:42:42 Commissioner Jarboe said he also agreed with previous Commissioners' statements. He said the requests follow the Comprehensive Plan, and the applicant has mitigated the concerns of the opposition. He discussed the height of the net poles. This is also a good example of adaptive re-use of an empty parking lot and empty store.

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00:46:47 Commissioner Brown noted that this is a minor expansion of existing C-2 zoning, in a Regional Center Form district.

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

00:47:15 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Cornerstone 2020 Staff Analysis, testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's findings of fact, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal is of a moderate to high intensity consistent with the high intensity uses found in a Regional Center Form District as the C-2 zoning district allows for a wide range of regional goods and services that are not available in lower intensity zoning districts which offer neighborhood goods and services. The proposed intensity is consistent with the zoning classifications found in Regional Center form districts along Outer Loop (Jefferson Mall) and the interchange of Interstate-265 and Brownsboro Road (Paddock Shops and Old Brownsboro Crossing). The proposed zoning district builds upon an existing regional shopping center and does not proposed to expand the extent of the form district. Civic uses can be found within the form district opposite Interstate-264. The proposal contributes to the identity of the regional center as a focal point for transit from homes and workplaces as the proposed C-2 zoning district allows by way of conditional use permit for the incorporation of a regional attraction and destination point for entertainment in an area of current vacancy. The proposal is compact and provides for efficient movement of pedestrians, vehicles, transit, and bicycles through and around the site as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The Traffic Impact Study made no recommendations for further improvements to the existing vehicular network serving the site. The proposal supports a high level of transit access and connectivity as the site is served by high frequency TARC route #19 and continued internal access from Christian

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way to Oxmoor Lane is retained as requested by TARC planning staff. The proposal includes unified signs, and landscaping and building design that gives identity to the center and that provides a human scale, and includes an internal focal point as the existing Oxmoor Center includes signature entrances and the proposal will provide interior landscape areas and a pedestrian and vehicular concourse from Oxmoor Lane to the primary building entrance and a pedestrian gathering space. The proposal provides shared parking to avoid excessive impervious surface and to encourage customers to visit several establishments without moving their vehicles as the Oxmoor Center is a regional indoor shopping center and provides shared parking for all uses for the benefit of their customers, employees, and guests of multiple retail, entertainment, and dining establishments; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal will not create a new center. The proposed zoning district is located within an existing Regional Center form district and allows for the construction of new attractions and destination points in a currently vacant area of a former anchor department store. The proposed C-2 zoning district is located at the interchange of a major arterial and a limited access highway and provides for the provision of goods, services, and entertainment to serve a population of at least 100,000 as called for in a Regional Center. The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment as the proposal allows for the reinvestment in a vacant anchor department store for at a regional shopping center and the proposed development plan includes shared parking, pedestrian ways, and integration with the existing shopping facility. The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place as the subject property is served by high frequency TARC route #19 and continued internal access from Christian Way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The proposal allows for the redevelopment of a previously indoor shopping center for the inclusion of outdoor amusement and entertainment for a wide reaching population to gather at the shopping center. The proposed C-2 zoning district does not prevent the incorporation of future residential or offices uses. It increases the potential for high density development in conjunction with a shopping facility and high frequency transit access. Residential development is not currently proposed on the subject site, but adjacent sites are zoned appropriately for high density development. The proposed development is designed to be oriented around a central gathering space as a previously approved restaurant development near the primary building entrance provides outdoor pedestrian amenity spaces. The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic,

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transit, pedestrian, environmental and aesthetic concerns as the Oxmoor Center is subject to recorded Crossover Access agreement as indicated by note #28 of the revised detailed district development plan. The proposal is designed to share utility hookups and service entrances with adjacent developments as the existing shopping center provides utility connections. The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. ADA parking spaces are provided immediately adjacent to pedestrian gathering spaces and primary building entrances; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because the proposed building materials are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro. The design of the entertainment facility integrates with recently approved development at the Center. The netting and poles of the golf driving range are necessary to maintain public safety. The proposal does not constitute a non- residential expansion into an existing residential area as the requested change in zoning is from C-1 to C-2 within the Regional Center form district. Noxious odors or emissions do not appear to be associated with the proposed zoning district or use beyond those expected of vehicular traffic associated with a regional shopping center. The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities as the Traffic Impact Study submitted with this application concluded, "There will be a manageable impact to the existing highway network, with Levels of Service remaining within acceptable limits. The delays experienced in the area will increase within acceptable limits, thus no improvements to the roadway system are recommended." The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as the proposed user is a recreational use and lighting is provided and necessary to light the outfield of the golf driving range in the evening. The applicant has provided evidence that demonstrates that the proposed lighting fixtures intended to light the outfield of the recreational use are aimed and focused on the outfield of the golf driving range and light trespass and glare beyond the field perimeter will be highly controlled. It has also been stated that the lighting fixtures will be installed within the golf driving range bays, not atop a roof, and these fixtures provide a high degree of cutoff; thus, limiting the impact on the night sky. Lighting within the parking lot is fully shielded. The lighting report concludes that virtually no light trespass will occur past property lines. The proposal is appropriately located for its intensity and located along a transit corridor within an activity center. The proposal provides appropriate transitions between uses that are substantially different in scale and

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intensity or density of development as the proposal calls for the redevelopment of an established regional shopping facility and will maintain current VUA LBAs based on the current extent of impervious surfaces. Trees will be provided as required within ILAs. The structure will be centrally located within the subject site in the area of a former anchor department store. The height of the proposed poles supporting the netting of the golf driving range are necessary to provide for public safety and the entertainment center components are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro. The design of the entertainment facility integrates with recently approved development at the Center. The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another as all planting material required by Chapter 10 of the Land Development Code will be provided and the proposal is located within the current extent of the Regional Center form district which is intended to serve populations of 100,000 or more. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards as the structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety. Parking and loading areas are consistent with the current extent of parking improvements and all planting material will be provided. Loading areas are not adjacent to residential areas. The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots as planting and screening along the public roadways and ILAs will be provided within the parking areas. No parking structures have been proposed, and signs will be compliant with Land Development Code, Chapter 8; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because the proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space as interior planting areas are provided and the project site integrates into a pedestrian plaza recently approved for the Oxmoor center. The project site is located in an area currently occupied by impervious surfaces. The extent of project improvements is consistent with the current extent and does not appear to negatively impact the protected waterway that runs through and under the Oxmoor Center; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because the proposal

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respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems as the extent of project improvements is consistent with the current extent and does not appear to negatively impact the protected waterway that runs through and under the Oxmoor Center. The proposal includes the adaptive reuse of an area previously used for an anchor department store, and the subject site is located in an area of existing impervious surfaces. The proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the proposal is located within the current extent of regional shopping center and Regional center form district. It is supported by an arterial roadway with direct access to an interstate. Primary access will be obtained from the arterial roadway via Oxmoor Lane and Christian Way; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means. Public sidewalks and connectivity to these walks is provided. The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development and adequate street stubs as internal access from Oxmoor lane to Christian Way is being maintained and primary access from all direction is obtained via these roadways from Shelbyville Road. No street stub are needed as periphery streets provide adequate access. Right-of-way dedication has not been required. The proposal includes adequate parking spaces to support the use as 374 parking spaces above the minimum have been provided. The proposal provides for joint and cross access through the development and to connect to adjacent development sites as the shopping center shares parking among all tenants and periphery roadways provide adequate access to nearby developments; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because adequate stub streets are provided as periphery roadways provide adequate access to nearby developments. Access to

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the subject site is from existing access and does not require traffic to travel through lower intensity areas. No nuisances are created by the existing access as it is from an arterial roadway with direct interstate access. The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity as the subject site is within an existing Regional Center intended to serve a population of greater than 100,000 and the subject property is served by high frequency TARC route #19. Continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. Bike parking is provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because the site contains a protected waterway. The proposal does not impact this waterway beyond the current conditions; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the proposal is located in an area served by existing utilities or planned for utilities. The proposal has access to an adequate supply of potable water and water for fire- fighting purposes. The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and Policies of Guideline 1 - Community Form. The subject property is located in the Regional Center Form District, which is an ideal fit for the applicant's proposed use. The proposed C-2 Commercial zoning is appropriate for a Regional Center, which is

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intended to contain a mixture of high intensity commercial uses including regional shopping and entertainment facilities. The subject property is connected to the existing Oxmoor Center Mall, which contains shopping, restaurant, and entertainment uses. The subject property is surrounded by commercial uses to the north across Shelbyville Road, to the northeast across Christian Way, and to the northwest across Oxmoor Lane. The subject property is surrounded by multi-family and undeveloped properties to the south, southeast, and southwest, all of which are zoned for future commercial and multi-family development. The subject property is in an area benefitted by regional connectivity and transportation infrastructure. Oxmoor Center Mall sits directly on Shelbyville Road, a major arterial, and is served by Interstate 264 less than a quarter of a mile to the west. The subject property is connected to Shelbyville Road by divided four-lane roads to the west and east, Oxmoor Lane and Christian Way, respectively. The subject property is also served by TARC. The proposal will also enhance the appearance and cohesion of the Oxmoor Center Mall property as a whole bringing the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and Policies of Guideline 2 - Centers. The proposed redevelopment will leverage and enhance the existing activity center at the Oxmoor Center Mall site, which is consistent with the Cornerstone 2020 Comprehensive Plan goal of promoting efficient land use and investment in existing infrastructure. The proposed redevelopment will utilize the existing parking and transportation infrastructure at the Oxmoor Center Mall site, and add a diversity of uses to the site that is needed; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and Policies of Guideline 3 – Compatibility. The subject property is the best location for the proposed redevelopment in our community. The subject property is connected to the existing Oxmoor Center Mall , which contains regional-scale shopping, restaurant, and entertainment uses that are complementary to the proposed use. The subject property is surrounded by other similar commercial uses, including offices, retail stores, car dealerships, shopping centers, and restaurants. The subject property is surrounded by the undeveloped properties to the south, southeast, and southwest, which are all zoned for future commercial, office and multi-family development. The subject property is well-served by existing transportation infrastructure, with easy access to Interstate 264 to the west via Shelbyville Road, and access to Shelbyville Road via both Oxmoor

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Lane and Christian Way. Since the original design for the property was made public, the applicant has made a number of refinements to the design to address neighborhood concerns about noise, traffic, and lighting. The three-story structure and driving range outfield have been moved 200 feet to the west and closer to Interstate 264 to reduce noise and lighting impacts and enhance traffic flow. The nearest residential uses will now be more than a quarter of a mile away from the proposed redevelopment. More than 90 percent of the nearby City of Hurstbourne homes will be a half mile or farther from the subject property. The applicant has proposed to install LED lighting below the roof line of the building to reduce light impacts. The applicant has also agreed to paint the net poles around the driving range to better blend with the surroundings and reduce visual impacts. The applicant has engaged noise, traffic, and lighting consultants to study and recommend further proposals to enhance the proposed design and ensure that residents in nearby Hurstbourne are not adversely affected. Copies of these studies are attached to this application. The sound study demonstrates that there will be no perceptible impact on residences to the east of the subject property. The lighting study demonstrates that the proposed redevelopment will both comply with the LDC's requirements regarding light trespass and improve over the existing situation; and

WHEREAS, the Commission further finds that that the proposal complies with the Intent and applicable Policies of Guidelines 4 - Open Space and 5 – Natural Areas and Scenic and Historic Resources. The proposed redevelopment will substantially improve the open area at the southern end of the Oxmoor Center Mall. The applicant's proposed three-story structure will be separated from the southern end of the enclosed Oxmoor Center Mall structure by new open space that will allow pedestrian access between the two sites. The southern end of the Oxmoor Center Mall is proposed to be redeveloped into two restaurants with outdoor seating facing the proposed driving range, and a third free-standing restaurant between Oxmoor Center Mall and the applicant's redevelopment that will also feature outdoor seating facing the shared pedestrian promenade. The subject property is particularly well suited for the proposed redevelopment because it has no natural, scenic, or historical resources on the subject property. Through the redevelopment of the parking area, over an acre of new green space will be created on the subject property. In addition, the applicant will plant at least 150 new trees on the subject property; and

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WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 6 - Economic Growth and Sustainability. The proposed redevelopment is exactly the kind of redevelopment and revitalization project this Guideline promotes. The southern portion of Oxmoor Center Mall, formerly home to the Sears department store, has been vacant since October 2017. The proposed redevelopment will follow the national trend of revitalizing enclosed malls by adding unique entertainment uses that cannot be replicated by internet retailers. In the early 20th Century, malls were community gathering spaces clustered in downtown areas. Then, in the 1950s to 1970s, the development of large suburbs outside of city centers saw the rise of suburban enclosed malls, such as Oxmoor Center and Mall St. Matthews. The current national trend is for retail to move either online or back toward downtown city centers, and enclosed suburban malls have had to adapt by adding unique entertainment uses, such as movie theaters, large-format video arcades, and other sports entertainment facilities that offer experiences that cannot be replicated on the internet. The proposed redevelopment follows this trend, and will offer the Oxmoor Center Mall site a fresh and unique regional attraction that will bring hundreds of new jobs to the area and induce further economic development in the area; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 7 - Circulation. The proposed redevelopment will retain the three existing direct access points to its parking lot- one directly from Oxmoor Lane to the west, one directly from Christian Way to the east, and a third access point to the south from a driveway running along the southern edge of the property that connects to Oxmoor Lane. Both Oxmoor Lane and Christian Way are divided four lane roads that connect directly to major arterial Shelbyville Road to the north, which connects to Interstate 264 less than a quarter of a mile to the west. The proposed redevelopment will also connect internally to the Oxmoor Center Mall parking lots to the north. The applicant is also conducting a traffic study in order to determine whether any roadway improvements will be necessary; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 9 - Bicycle, Pedestrian and Transit. Pedestrians will be able to access the proposed redevelopment through the new south entrance of the Oxmoor Center Mall, which will be connected to the proposed redevelopment via a new pedestrian promenade that will also connect to the three proposed restaurants with outdoor seating. The proposed redevelopment also includes new pedestrian

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sidewalks along Christian Way that will connect the subject property to the open space to the southeast, and also improve pedestrian access from the City of Hurstbourne neighborhoods to the east. The proposal will contain bicycle parking facilities as required by the LDC. TARC bus stops are located to the north of the subject property along Shelbyville Road at the intersections with Oxmoor Lane and Christian Way, providing easy access to Oxmoor Center Mall and the proposed redevelopment; and

WHEREAS, the Commission further finds that the proposal complies with the Intents and applicable Policies of Guidelines 10 – Flooding and Stormwater and 11-Water Quality. The proposed redevelopment will decrease the impervious area of the subject property by approximately 48,000 square feet, and will provide floodplain and drainage improvements as required by MSD; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 12-Air Quality. The applicant is conducting a traffic study in order to determine the potential impact on area roads from the proposed redevelopment. However, given the existing Oxmoor Center Mall and other commercial uses nearby along high-traffic Shelbyville Road, the proposed redevelopment should generate fewer trips than the retail space it is replacing. The proposed redevelopment also contains new sidewalks along Christian Way which will facilitate pedestrian access to the Oxmoor Center site from nearby residential areas; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable Policies of Guideline 13-Landscape Character. The proposal includes improved landscaping, tree canopy, and parking lot lighting that will improve the appearance and visual impact of the subject property. The proposed redevelopment includes over one acre of reclaimed green space within the Oxmoor Center parking lot. The applicant will provide a more detailed landscape plan before the Planning Commission public hearing on the proposed redevelopment; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change-in-zoning from C-1 to C-2, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.
NOT PRESENT: Commissioner Smith.

Conditional Use Permit

00:48:30 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, and deliberations heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal is consistent with the Comprehensive Plan as the proposed building materials are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro and setbacks, lot dimensions and building heights have demonstrated compatibility with the form district and surrounding area. The proposal contributes to the identity of the regional center as a focal point for transit from homes and workplaces. Additionally, a Regional Center form district is intended to serve a market area for a population of at least 100,000 and the proposed use provides a regional attraction and destination point. Redevelopment and infill development are also encouraged within the form district. The design of the entertainment facility integrates itself with a recently approved development at the Center. The structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety; and

WHEREAS, the Commission further finds that the proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as the proposed user is a recreational use and lighting is provided and necessary to light the outfield of the golf driving range in the evening. The applicant has provided evidence that demonstrates that the proposed lighting fixtures intended to light the outfield of the recreational use are aimed and focused on the outfield of the golf driving range and light trespass and glare beyond the field perimeter will be highly controlled. It has also been stated that the lighting fixtures will be installed within the golf driving range bays, not atop a roof, and these fixtures provide a high degree of cutoff; thus, limiting adverse impacts on the night sky; and

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WHEREAS, the Commission further finds that the proposal is compatible with surrounding uses and the general character of the form district as the design of the entertainment facility integrates itself with a recently approved development at the Center. The structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety. The Traffic Impact Study provided as part of this application concluded that impacts are manageable and made no recommendations for roadway improvements; and

WHEREAS, the Commission further finds that necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

WHEREAS, the Commission further finds that the proposal complies with the following specific standards required to obtain the conditional use permit requested:

Golf Driving Ranges and Miniature Golf Courses may be allowed in the C-2, C-M, M-1, M-2, M-3, and EZ-1 Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements.

- A. All buildings and structures shall be at least 30 feet from any property line.
- B. Protection of Adjacent Properties - Fences, plantings, or sufficient area shall be provided to insure the safety and protection of persons on all adjacent land. Any netting used for the protection of adjacent properties shall observe yard and height requirements of the district in which it is located.
- C. Signs - Except in districts where signs are allowed, one non-flashing sign, not to exceed 60 square feet in area and not to exceed 10 feet in height, may be provided at the major entrance.
- D. Driving Directions - All golf ball driving directions shall be away from any street, highway or residential area.

The Commission finds that the requested conditional use permit meets the intent of each part as all buildings and structures are 30' from the abutting right-of-way of the redevelopment area, netting has been provided to insure the safety and protection of

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persons within the subject area and adjacent property, signage will be compliant with Chapter 8 of the Land development Code, and while the orientation of the range faces a public street and residential area within the general vicinity, the site maintains frontage on two public roadways and sufficient distance away from these streets and all residential areas has been provided as the golf driving range is centrally located in the area of a former anchor department store. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit for Golf Driving Range (LDC 4.2.58).

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Variances

1. **Variance #1** from Land Development Code (LDC), section 5.3.3.C.2.a to allow the primary structure to exceed the maximum street side yard setback of 275' along Christian Way and Oxmoor Lane as shown on the revised detailed district development plan.
2. **Variance #2** from LDC, section 5.3.3.C.2.d to exceed the maximum permitted height of 150' to allow a pole height of 175' for driving range netting.
3. **Variance #3** from LDC, section 4.8.3 to allow for parking facility encroachments into the 100' protected waterway buffer as shown on the revised detailed district development plan.

00:49:28 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's justification statement, was adopted:

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(Variance #1) WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare as the location of the primary structure is centrally located in the area of a former anchor department store and the site is maintains frontage on two public roadways. The setback will not impact the safe movement of pedestrians or motorists and enables the continued movement of vehicles and transit from Oxmoor Lane to Christian Way; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the primary structure is located in the area of a former anchor department store and maintains a similar setback to public roadways; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as sight lines for the movement of pedestrians and motorists are not impacted and the proposal calls for the redevelopment of a regional shopping center; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the location of the primary structure allows for proper vehicular circulation and spacing between public streets and residential uses within the general vicinity; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the subject site contains frontage on two public roadways and is a large development within the center; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the location of the primary structure is consistent with the current location of a former anchor department store and pedestrian, transit, and vehicular accommodations have been made to appropriately design the subject site and integrate into the existing center; and

WHEREAS, the Commission further finds that 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 no development has occurred; and

WHEREAS, the Commission further finds that the proposed variance, which will allow the proposed redevelopment to be set back more than 275 feet from the property line along Christian Way and Oxmoor Lane, will not adversely affect the public health, safety or welfare. The proposed redevelopment will sit almost entirely within the existing

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footprint of the currently vacant Sears department store, which the applicant proposes to remove and redevelop into a Topgolf, a driving range/restaurant concept. The applicant proposes to reconfigure the existing parking lot that will surround the proposed redevelopment to improve traffic flow and ease of access to Christian Way and Oxmoor Lane, including creating a new dedicated driveway and sidewalk within the parking lot from the western access point at Oxmoor Lane to the facility. The proposal will bring the bulk of the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity as the proposed redevelopment will sit almost entirely within the existing footprint of the Sears department store. The Sears structure is currently approximately 385 feet from the western property line along Oxmoor Lane, and 750 feet from the eastern property line along Christian Way. The proposed building will retain a similar setback from both property lines, but the end of the proposed driving range outfield will be located 275 feet from Christian Way. Previous plans proposed placing the structure 200 feet further to the south and east, but the applicant revised its plans to move the proposed structure back closer to the southern end of Oxmoor Center Mall to reduce noise and lighting impacts; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed building location will allow the applicant to create a more sensitive design that will result in no light or perceptible noise trespass within the Hurstbourne neighborhood. Setting the proposed redevelopment back as close as possible to the southern edge of Oxmoor Center Mall will reduce the light and noise impacts to the surrounding area. The applicant also proposes to create a new dedicated driveway and sidewalk within the western half of the parking lot, which will improve public safety for vehicles and pedestrians access the site from the access point at Oxmoor Lane; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal minimizes the light and noise impacts to the surrounding area while retaining essentially the same footprint as the existing Sears structure. The variance will allow the applicant to redevelop the existing parking lot to bring it into compliance with current design standards, which will improve pedestrian and vehicle safety through new lighting and parking design; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The

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proposal is to redevelop the existing Sears department store and surrounding parking lots at the Oxmoor Center Mall into a Topgolf, a driving range/restaurant concept. The Oxmoor Center Mall site is unique, and the scale of the existing mall structure and the proposed redevelopment require large parking areas. To minimize noise and light impacts, the proposed redevelopment will sit almost entirely within the existing footprint of the Sears building, which will require the redevelopment to exceed the maximum setback requirements in the Land Development Code; and

WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the size and parking needs of the proposed redevelopment require that it be located more than 275 feet from the east and west property lines in the existing footprint of the Sears building. Strict application of the regulations would force the applicant to move the structure closer to either the east or west property lines, which could increase light and noise impacts to surrounding areas; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the maximum setback requirements to the unique Oxmoor Center Mall property. The scale of the existing mall structure and the proposed redevelopment require large parking areas, and thus variances from the maximum setback requirements. The proposed redevelopment will sit almost entirely within the footprint of the existing Sears structure, the best location for the proposed building; and

(Variance #2) WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare as the height requested for the poles supporting the golf driving netting is necessary to ensure the public health, safety, and welfare of persons visiting the Oxmoor Center and passers-by on nearby roadways; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the requested variance is to exceed a maximum height of 150' and be 175'; a variance of 25'. While the netting slightly exceeds the maximum allowable height, it does not contain a mass or bulk associated with a building of a similar height. Further, all other building materials associated with the proposed use are consistent with the development of the Oxmoor Center and design of recent development in the general vicinity or Regional Centers found elsewhere in Louisville Metro; and

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WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the netting supported by the poles are intended to prevent hazards and nuisances associated with the flight of golf balls; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the pole height appears to be necessary to ensure public safety and welfare, as well as preventing hazards and nuisances associated with flight of golf balls; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the facility requires netting to ensure public safety; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the height of poles are necessary to support netting that provides public safety and minimizes hazards associated with the flight of golf balls; and

WHEREAS, the Commission further finds that 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 no development has occurred; and

WHEREAS, the Commission further finds that the proposed variance, which will allow for net poles surrounding the applicant's proposed driving range to exceed the 150' maximum accessory building height by 20', will not adversely affect the public health, safety or welfare. In fact, the proposed net poles are a key safety feature of the proposed redevelopment. The proposal is for the net poles to completely encircle the proposed Topgolf outfield on the southern portion of the Oxmoor Center Mall property. The height of the net poles ensures that golf balls do not escape the top of the netting, thus ensuring the safety of pedestrians and vehicles in the parking lot that will surround the driving range; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity, as the net poles are consistent with the commercial character of the subject property and surrounding area. The subject property sits on the southern portion of the Oxmoor Center Mall, which sits within a highly developed commercial corridor along Shelbyville Road designated Regional Center Form District, the most intense commercial form district outside of the Central Business District. Other commercial uses, including retail stores, car dealerships, shopping centers, and restaurants border the Oxmoor Center Mall to the north across Shelbyville Road, to the northeast across Christian Way, and to the northwest across Oxmoor Lane.

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Undeveloped properties zoned for future multi- family and commercial development surround the subject property to the south, southeast, and southwest. The net poles will not create undue visual impacts, as buildings are allowed a maximum height of 150' within the Regional Center Form District. The nearest residential uses will be a significant distance from the proposed redevelopment and screened by an existing tree line. More than 90 percent of the nearby City of Hurstbourne homes will be a half mile or farther from the subject property; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed net poles are key safety features of the proposed redevelopment that re designed to ensure the safety of pedestrians and vehicles and in the parking lot that will surround the driving range. The applicant does not propose to place any lights or speakers on the net poles, minimizing visual and sound impacts, particularly at night. The applicant also proposes to paint the net poles so that they blend in with the surrounding area, further lessening the visual impact; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal balances the need to ensure the safety of pedestrians and vehicles in the surrounding parking lot with the compact nature of the proposed Topgolf. The 20' variance will allow for the construction of a unique, exciting, and family-friendly entertainment option on the former Sears department store site that is sorely in need of redevelopment; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The variance is the result of the need to erect net poles to ensure the safety of pedestrians and vehicles in the surrounding parking lot near the proposed Topgolf structure. Topgolf is unique to the region. The applicant is not proposing to build a structure that exceeds the height requirements, but rather to build net poles that will serve as a key safety feature for the proposed redevelopment; and

WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the compact nature of the proposed driving range requires taller net poles to ensure that golf balls do not escape over the top of the netting. The proposed variance will permit the applicant to bring its unique driving range/restaurant concept to the region while ensuring the safety of pedestrians and vehicles nearby; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but

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are, instead, the result of misapplication of the accessory building height requirements the applicant's proposed net poles. The proposed net poles are not truly accessory buildings, but rather a safety feature of the proposed driving range. The applicant has taken steps to ensure that the poles do not have undue visual or noise impacts by agreeing not to place lights or speakers on the poles; and

(Variance #3) WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the protected waterway currently flows through and under the Oxmoor Center; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the protected waterway currently flows through and under the Oxmoor Center; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the protected waterway currently flows through and under the Oxmoor Center and existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that 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 no development has occurred; and

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WHEREAS, the Commission further finds that the proposed variance, which will allow the parking area of the proposed redevelopment to encroach into the 100-foot stream buffer, will not adversely affect the public health, safety or welfare. The applicant proposes to reconfigure the existing parking lot that will surround the proposed redevelopment to improve traffic flow and ease of access to Christian Way and Oxmoor Lane, including creating a new dedicated driveway and sidewalk within the parking lot from the western access point at Oxmoor Lane to the facility. The proposal will bring the bulk of the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting. The proposed redevelopment will not expand the footprint of the existing parking area or further encroach into the Beargrass Creek buffer area and will only include internal realignments of the parking area near Beargrass Creek to accommodate the new Topgolf facility; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity as the footprint of the existing parking area will not change and will not further encroach on the buffer adjacent to Beargrass Creek. The proposed internal realignments in the parking area will allow the applicant to bring the existing parking area into compliance with current design standards and add improved landscaping, tree canopy, and parking lot lighting; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed internal realignments in the parking area will improve traffic flow and ease of access to Christian Way and Oxmoor Lane, which will enhance vehicle and pedestrian safety and reduce noise impacts; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal will retain the same footprint as the existing parking area while allowing the applicant to make numerous design updates that will improve the safety and appearance of the parking area. These design updates will reduce the noise and lighting impacts on surrounding areas; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The Oxmoor Center Mall site is unique, and the scale of the existing mall structure and the proposed redevelopment require large parking areas. These parking areas have encroached on the Beargrass Creek buffer since their construction in the early 1980s, and the applicant proposes to simply upgrade the existing parking areas to bring them into compliance with current design standards; and

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WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the size and parking needs of the proposed redevelopment require that the parking areas be permitted to encroach on the 100-foot stream buffer area. Strict applications of the regulation would force the applicant to remove the existing parking areas and disturb currently undeveloped land to construct new parking areas nearby; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the stream buffer requirements to the unique Oxmoor Center Mall property. The scale of the existing mall structure and the proposed redevelopment require large parking areas, and thus variances from the stream buffer requirement. The proposed redevelopment will not expand the footprint of the existing parking area or further encroach into the Beargrass Creek buffer area; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the following Variances:

1. **Variance** from Land Development Code (LDC), section 5.3.3.C.2.a to allow the primary structure to exceed the maximum street side yard setback of 275' along Christian Way and Oxmoor Lane as shown on the revised detailed district development plan.
2. **Variance** from LDC, section 5.3.3.C.2.d to exceed the maximum permitted height of 150' to allow a pole height of 175' for driving range netting.
3. **Variance** from LDC, section 4.8.3 to allow for parking facility encroachments into the 100' protected waterway buffer as shown on the revised detailed district development plan.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver

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Waiver of LDC, Section 10.2.10 to allow for parking facility encroachments into the required 15-foot Vehicle Use Area Landscape Buffer Area (VUA LBA) as shown on the revised detailed district development plan.

00:50:54 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's justification statement, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided to ensure appropriate landscape design and protect the character of roadway corridors; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided; and

WHEREAS, the Commission further finds that the proposed waiver from the required landscape screening requirements along Christian Way and Oxmoor Lane will not adversely affect the adjacent property owners as the existing parking areas are not

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screened along these streets, and the applicant proposes to improve the overall appearance of the parking area by bringing the parking areas more into compliance with current design standards. The applicant proposes to improve landscaping, tree canopy, and parking lot lighting. Thus, the proposal will not result in any new unscreened parking and will allow the applicant to improve the overall appearance of the parking areas; and

WHEREAS, the Commission further finds that the proposed waiver will not violate the Comprehensive Plan. The existing parking areas are not screened along Christian Way and Oxmoor Lane, and the applicant proposes other changes to the parking areas that will improve their overall appearance and reduce traffic and light impacts. The proposed redevelopment as a whole will revitalize the currently vacant Sears property, bring an exciting and family-friendly entertainment option to the region, drive economic growth in the existing Regional Center, and bring the southern half of the Oxmoor Center Mall into compliance with current design standards; and

WHEREAS, the Commission further finds that the extent of the proposed waiver of the regulation is the minimum necessary to afford relief to the applicant. The proposed waiver will permit the applicant to retain the existing parking areas while improving their outdated appearance through new landscaping, tree canopy, and lighting; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant as the applicant will not be adding any new unscreened parking and proposes to substantially improve the appearance of the existing parking areas. The existing parking areas are not screened along Christian Way and Oxmoor Lane, and the applicant proposes to improve landscaping, tree canopy, and parking lot lighting; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver** of LDC, section 10.2.10 to allow for parking facility encroachments into the required 15' Vehicle Use Area Landscape Buffer Area (VUA LBA) as shown on the revised detailed district development plan.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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Lighting Report and installation of outdoor lighting in excess of 1,800 lumens located at a height greater than 30'

00:51:50 On a motion by Commissioner Brown, seconded by Commissioner Robinson, the following resolution, based on the evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's prepared lighting report, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Lighting Report and installation of outdoor lighting in excess of 1,800 lumens located at a height greater than 30'.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver of LDC, section 4.1.3 to not provide fully shielded lighting for golf driving range

00:54:39 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's justification statement, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the lighting report indicates that the proposed lighting fixtures are aimed and focused on the outfield of the golf driving range for the purpose of lighting the field and light trespass and glare beyond the field perimeter will be highly controlled and minimized. There are no residential uses or other sensitive uses such as churches or schools within 500' and the nearest residential dwelling is over 1,200' from the proposed fixtures; and

WHEREAS, the Commission further finds that Guideline 3, Policy 8 of Cornerstone 2020 calls for mitigation of adverse impacts of lighting from proposed development on nearby properties, and on the night sky. The lighting report indicates that the field lighting will have virtually no light trespass beyond the field perimeter and the golf driving range is encompassed by a parking lot. The distance from the golf driving range bays housing the proposed fixtures to the pavement of the nearest public road is

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roughly 900' and the nearest dwelling unit is over 1,200 feet from these fixtures. The lighting plan indicates that the fixtures can be highly controlled and landscaping is proposed at the east end of the field perimeter to further mitigate any potential adverse impacts of glare. The applicant has indicated that fixtures will contain a visor to limit uplight; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the existing regulation does not appear to be practical for an outdoor recreational facility to appropriately light the field; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the existing regulation does not appear to be practical for an outdoor recreational facility to appropriately light the field and there will be virtually no light trespass beyond the field perimeter. Other measures that exceed the minimums of the district have been included to mitigate potential adverse impacts as a landscape screen at the east end of the field has been proposed; and

WHEREAS, the Commission further finds that Topgolf USA Louisville, LLC (the "applicant") is seeking a waiver of LDC Section 4.1.3.6.2.c, which requires all lighting fixtures over 3,500 lumens to be fully shielded. After an exhaustive search for field lighting that meets the IESNA definition of "fully shielded," the applicant has been unable to locate a fixture that would simultaneously meet the "fully shielded" requirement and light the field. In fact, the applicant has worked with a member of the IESNA Sports Lighting Committee to come up with the lighting design proposed, which complies with LDC Section 4.1.3.6.6, which covers recreational lighting. As shown in the lighting report performed by Keith Pharis, PE, the proposed lighting plan for Topgolf and updated parking lot lighting at Oxmoor Center will produce less up-light, spill-light and glare than the parking lot lighting currently in place at Oxmoor Center; and

WHEREAS, the Commission further finds that Chapter 4 of the Land Development Code contains two contradictory requirements. Section 4.1.3.6.2.c states that all luminaires in all form districts that are over 3,500 lumens must be fully shielded. Section 4.1.3.6.6, titled Recreational Facilities, states that recreational lighting (for sports fields) must be fully shielded or designed with sharp cut off capability, so as to minimize up-light, spill- light, and glare. Unfortunately, the intended distinction between recreational lighting and all other lighting (i.e. sidewalk, parking lot, architectural, etc.) was not incorporated into Section 4.1.3.6.2.c. According to the applicant's lighting expert, there are no recreational lighting fixtures under 3,500 lumens, which is the equivalent of approximately three 75-watt lightbulbs. Therefore, according to a strict

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reading of the LDC, all recreational lighting must be "fully shielded." Through the applicant's lighting expert and manufacturer, the applicant has explored a variety of fixtures in order to attempt to provide lighting that meets these two incongruous requirements. But there are no lighting fixtures available for Topgolf's recreational field applications that meet the "fully shielded" requirement. Because there are no applicable fixtures that meet the "fully shielded" requirements of Section 4.1.3.B.2.c, the applicant is seeking a waiver; and

WHEREAS, the Commission further finds that the proposed waiver will not adversely affect adjacent property owners. As stated in the lighting report from Keith Pharis, PE, the proposed lighting will result in less glare, less spill-light and less up-light than the existing parking lot fixtures at Oxmoor Center. According to Mr. Pharis's lighting report, "The proposed design meets or surpasses the LDC restrictions on [light trespass, light pollution and glare] and improves over the current installation (which does not have glare control and fails to meet the light trespass requirements). The report goes on to state that "The current fixtures are also "high glare" luminaires with no shielding or cutoff optics and are highly visible from adjoining properties." Allowing the proposed development will reduce glare, reduce up-light and reduce spill-light on adjacent properties to levels that are compliant with Section 4.1.3.8.11; and

WHEREAS, the Commission further finds that the proposed waiver will not violate the Comprehensive Plan. The proposed waiver will allow for lighting that meets the intent of Section 4.1.3 and the requirements of 4.1.3. 8.6, while allowing for highly focused but not fully shielded fixtures. As stated above, fully shielded recreational lighting is not commercially available for field lighting. Guideline 3-Compatibility states that applicants should mitigate adverse impacts of lighting from proposed development on nearby properties and on the night sky. The proposed lighting *system*, including the parking lot revision, will result in less glare, less up-light, and less spill-light, the goal of this policy. According to Mr. Pharis's report, the [Topgolf] fixtures have tightly controlled optical patterns that are designed specially to light the field with a high degree of accuracy and virtually no light trespass beyond the field perimeter. In addition, Topgolf will install a dense evergreen screen along the end of the outfield, which will shield the lights even further; and

WHEREAS, the Commission further finds that the extent of the waiver is the minimum necessary to afford relief to the applicant. Due to the lack of available fully shielded recreational fixtures, no recreational facility can comply with Section 4.1.3.B.2.c. Granting the waiver will allow the proposed development to provide lighting that complies with Section 4.1.3.B.6 and 4.1.3.6.11.; and

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WHEREAS, the Commission further finds that the applicant has incorporated other design measures that compensate for its non-compliance with the fully shielded requirement. The proposed Topgolf and Oxmoor parking lot renovation will result in less glare, less up-light, and less spill-light than the existing condition. In fact, the revised lighting, including Topgolf, will result in a net lumen reduction on the east side of the former Sears building of over 1,100,000 lumens (Existing: 3,675,000 lumens-Proposed: 2,544,000 lumens=Net Reduction-1,131,000 lumen reduction). All in all, the proposed redevelopment will result in a dramatic improvement in lighting conditions; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of LDC, section 4.1.3 to not provide fully shielded lighting for golf driving range.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Revised Detailed District Development Plan and Binding Elements

00:55:43 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, and deliberations heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. The extent of project improvements is consistent with the current extent and improvements do not appear to negatively impact the protected waterway that runs through and under the Oxmoor Center. The proposal's drainage plans have been approved by MSD. The redevelopment area will maintain current VUA LBAs and all planting material and screening required will be provided. Trees will be provided as required within ILAs and minimum standards for tree canopy compliance will be met; and

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WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The Traffic Impact Study concluded that there will be a manageable traffic impact and no recommendations for further improvements to the existing vehicular network serving the site were made. ADA and bicycle parking spaces are provided immediately adjacent to pedestrian gathering spaces and primary building entrances. The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking. Oxmoor Center is subject to a recorded Crossover Access agreement as indicated by note #28 of the revised detailed district development plan; and

WHEREAS, the Commission further finds that the proposal provides open space that helps meet the needs of the proposed development and community as interior planting areas are provided and the project site integrates into a pedestrian plaza recently approved for the Oxmoor center. The project site is located in an area currently occupied by impervious surfaces; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that setbacks, lot dimensions and building heights are compatible with the existing and projected future development of the area as the proposed building materials increase the new development's compatibility. The proposed building materials are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro. The design of the entertainment facility integrates itself with a recently approved development at the Center. The structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety. All planting material, screening, and tree canopy as required by Chapter 10 of the Land Development Code will be provided; and

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WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified. Conformance to the comprehensive plan has been thoroughly detailed in the *Cornerstone 2020 Staff Analysis* found in *Attachment 3* of this report. The proposal contributes to the identity of the regional center as a focal point for transit from homes and workplaces and provides for the incorporation of a regional attraction and destination point for entertainment in the area of a former anchor department store. The proposal builds upon an existing regional shopping center within the current extent of the Regional Center Form District. The proposal provides for the efficient movement of pedestrians, vehicles, transit, and bicycles through and around the site and is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities. It also maintains a high level of transit access and connectivity. Adequate parking to support the use has been provided. The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as the proposed user is a recreational use and lighting is provided and necessary to light the outfield of the golf driving range in the evening. The applicant has provided evidence that demonstrates compliance with the Comprehensive Plan. The redevelopment of the subject property allows for the continued and viable provisions of goods, service, and entertainment to a market population of greater than 100,000 as called for in the form district; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan for golf driving range and entertainment center subject to the deletion of existing binding elements for the redevelopment site only, and **SUBJECT** to the following binding elements for the redevelopment site only:

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review, and the Metropolitan Sewer District
 - b. 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
4. 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.
 5. 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.
 6. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
 7. The Planning Commission shall require a full traffic and air quality analysis, including an arterial analysis for Shelbyville Road, before considering any additional development of the general area known as Oxmoor Center/the Bullitt Farm. This binding element shall apply to any commercial, retail, residential or office development. The aforementioned analysis shall include expected traffic from all approved developments within the impact area, as defined by the Department of Public Works. It shall also include any proposed roadway improvements expected to be completed before completion of the proposed development. The goal of the traffic analysis is to recommend appropriate mitigation measures to accommodate expected traffic from the proposed development. Mitigation measures for traffic and air quality shall include, but not limited to, recommended signal timing adjustments along Shelbyville Road and

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construction of Bunsen/Bowling Parkway, in part or whole. The Developer should also furnish additional mitigation recommendations, as required, at impacted intersections.

8. Parking facilities as shown on the approved development plan shall be restricted to the parking of vehicles for guests, employees, and customers of the Oxmoor Center only.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 1, 2018 Planning Commission meeting.
10. Enhanced landscaping that is substantially similar to that depicted in the Enhanced Landscape Exhibit contained in the applicant's lighting waiver presentation at the October 15, 2018 Planning Commission public hearing shall be provided.
11. Field lighting shall be dimmed by 50% at the end of business each evening and be fully shut off by two hours after the close of business.
12. Two hundred linear feet of sidewalk from the proposed temporary bus stop on Christian Way to the sidewalk in front of Macy's shall be constructed. Should other legal obligations prevent this sidewalk from being constructed; the applicant will work with TARC to determine an acceptable alternative. Construction plans bond and permit from Metro Public Works required prior to the issuance of a building permit. Sidewalks shall be constructed prior to date of the issuance of the Certificate of Occupancy.
13. Operating hours shall be from 9:00 a.m. to 12:00 a.m. Sunday through Thursday, and 9:00 a.m. to 2:00 a.m. Friday and Saturday.
14. An updated sound study shall be performed and provided to the Louisville Metro Planning Commission for review within 180 days of the first day of operation. This study shall include peak operating hours and measurements taken from those locations previously indicated in the sound study of record. Noise levels attributed to the TopGolf facility shall be substantially similar to the sound study of record, unless otherwise approved by the Louisville Metro Planning Commission. Review of the updated study shall occur in a Business Session of the Planning Commission. If additional information or testimony is required, the Planning Commission may elect to hold a public hearing and determine notification requirements.

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The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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PUBLIC HEARING

CASE NO. 18MINORPLAT1142

NOTE: This case was heard out of order. It was heard immediately following Item #5.

Request:	Minor Plat to create air right space
Project Name:	Galt House East
Location:	325 West Main Street
Owner:	Al J. Schneider Company
Applicant:	Al J. Schneider Company
Applicant's Representative:	Bingham Greenebaum Doll LLP
Jurisdiction:	Louisville Metro
Council District:	4 – Barbara Sexton Smith

Case Manager: Brian Davis, AICP, Planning & Design Manager

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:

02:26:03 Brian Davis presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of this request:

Jeffrey A. McKenzie, Bingham Greenebaum Doll, 3500 PNC Tower, 101 South Fifth Street Louisville, KY 40202

Summary of testimony of those in favor:

02:31:30 Jeffrey A. McKenzie, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

02:44:06 John Carroll, legal counsel for the Planning Commission, and Mr. McKenzie discussed what constituted a "practical definition" for air rights above the buildings. See recording for detailed discussion. Mr. McKenzie said it is a metes-and-bounds description in three dimensions.

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02:46:10 Commissioner Carlson asked if air traffic would be “trespassing” if they fly over this area. Mr. McKenzie said no, and added that there is a provision in the Code which gives the FAA rights to determine flight rights over property, at a certain altitude. He explained some FAA regulations in detail. Mr. McKenzie also discussed Thunder Over Louisville and said those aircraft have also been granted flight rights.

02:47:43 Mr. Carroll asked if the air rights could be sold. Mr. McKenzie said they can.

The following spoke in opposition to this request:

No one spoke.

Deliberation:

02:49:04 Commissioners’ deliberation.

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.

Minor Subdivision Plat

02:52:00 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Report and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that, based on the staff report and evidence and testimony heard today, was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Minor Subdivision Plat.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

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NOT PRESENT: Commissioner Smith.

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PUBLIC HEARING

CASE NO. 18DEVPLAN1122

NOTE: This case was heard out of order. It was heard immediately following Item #3.

Request:	Revised Detailed District Development Plan for multi-family residential development
Project Name:	Bridwell Apartments
Location:	4856 Cane Run Road
Owner(s):	Hogan Holdings 36 LLC
Applicant:	Hogan Holdings 36 LLC
Applicant's Representative:	Mike Hill - Land Design & Development
Jurisdiction:	Louisville Metro
Council District:	1 – Jessica Green

Case Manager: Dante St. Germain, 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:

01:01:34 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:06:12 Commissioner Brown noted that binding element #8 has a DRC meeting date, which should be changed to "October 18, 2018 Planning Commission public hearing."

The following spoke in favor of this request:

Mike Hill, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Mike Leonard-Hogan, 9300 Shelbyville Road Suite 1300, Louisville, KY 40222

Summary of testimony of those in favor:

01:07:36 Mike Hill, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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01:14:56 Commissioner Carlson asked what the width is of the Eva Road connection. Mr. Hill said 18 feet wide. Commissioner Carlson said that fire lanes are required to be 20 feet wide. Mr. Hill said he would discuss this with the applicant.

01:15:29 Commissioner Howard asked if an existing recorded shared access easement has been submitted to the Planning Commission. Mr. Hill said this has been submitted – it was created and recorded with previous versions of this property development (the car wash, and prior plans.)

01:16:15 Commissioner Jarboe asked if fencing would be provided to buffer the car wash from the residential. Mr. Hill said no fencing is proposed; the goal is to use landscaping instead to comply with the screening requirements.

The following spoke in opposition to this request:

No one spoke.

Rebuttal:

There was no rebuttal, since no one spoke in opposition.

Deliberation:

01:16:49 Commissioners' deliberation.

01:17:15 In response to Commissioner Howard's questions about proposed binding element #4B, Paul Whitty, legal counsel for the Planning Commission, stated that the applicant should re-submit a copy of the recorded instrument to the Office of Planning and Design Services

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.

[Revised Detailed District Development Plan

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01:19:05 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Staff Analysis and Standard of Review, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject site. The site is currently a grassy lot and no natural resources appear to exist on the site; and

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

WHEREAS, the Commission further finds that open space requirements are being met. Recreational open space requirements are also being met, with a walking path being provided as a recreational amenity; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The proposed multi-family residential use is an appropriate transition between the more intense commercial uses to the south and the less intense single-family residential uses to the north. The development provides the required landscape buffer areas between the proposed development and the single-family residential properties to the north; and

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

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised Detailed District Development Plan, **ON CONDITION** that the Eva Road connection is widened to 20 feet; that Binding Element #8 is changed to reflect today's date; and that a reciprocal access and crossover easement agreement shall be re-submitted to the Office of Planning and Design Services, **SUBJECT** to the following binding elements:

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1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Office of Planning and Design Services. A copy of the recorded instrument shall be submitted to the Office of Planning and Design Services prior to obtaining a building permit.
 - 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 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

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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.

6. 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.
7. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 18, 2018 Planning Commission meeting.
9. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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PUBLIC HEARING

CASE NO. 18DEVPLAN1132

NOTE: This case was heard out of order. It was heard immediately following Item #4.

Request: Revised District Development Plan and Revised Major Preliminary Subdivision
Project Name: Notting Hills Section 4 Phase II
Location: 18601 Chadwick Glen Circle
Owner: Welch Developers LLC
Applicant: Welch Developers LLC
Representative: Nick Pregliasco - Bardenwerper Talbott & Roberts PLLC
Kelli Jones - Sabak, Wilson & Lingo
Jurisdiction: Louisville Metro
Council District: 19 – Julie Denton

Case Manager: Jay Lockett, Planner I

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:

01:20:46 Jay Lockett presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:27:19 Commissioner Jarboe said there were references in some of the opposition letters to this being a “zoning change”. He noted that this is not a zoning change. Mr. Lockett added that, by Land Development Code standards, this proposal would be a less-intense use than what would be allowed and what was previously approved for this site.

01:27:40 Commissioner Brown said some of the binding elements needed to be renumbered in the staff report.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

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Kelli Jones, Sabak, Wilson & Lingo, 608 South Third Street, Louisville, KY 40202

Scott Welch, 301 Middletown Park Place,

Summary of testimony of those in favor:

01:28:11 Nick Pregliasco, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He made the argument for condominiums, as opposed to single-family detached homes, and noted that the requirement for 80% brick and same building materials is in the "Covenants, Conditions and Restrictions" [CC&R] for the development.

01:41:28 In response to a question from Commissioner Brown, Mr. Pregliasco the binding elements require 60% brick, but the "Covenants, Conditions and Restrictions" require 80% and is what the applicant will agree to.

01:42:27 Commissioner Carlson asked if the actual size of the dwelling units would be comparable to existing structures. Mr. Pregliasco said the applicant will adhere to the CC&R requirements for minimum square footages, etc. He also discussed the setbacks.

01:43:50 Kelli Jones, an applicant's representative, said that, although the zoning is R-5A, the structures have been designed to R-5 standards, with the exception of the garages being set back 20 feet as opposed to 25 feet. The garages will be set back 25 feet from the sidewalk. She discussed building size in detail. It will match what is in other sections of Notting Hills.

01:44:48 In response to a question from Commissioner Jarboe, Mr. Pregliasco described changes to the proposal since it was originally approved in 2001. There are existing duplexes and four-plexes. Ms. Jones discussed the building out of the subdivision.

01:47:12 Commissioner Jarboe said that many of the letters referenced "agreements" – that there had been agreements about streets, and fencing, etc. He asked Mr. Pregliasco what these agreements are that the residents are referring to? See recording for detailed conversation.

01:50:04 Ms. Jones showed the Commissioners an exhibit that was not in the Power Point presentation regarding fencing and buffering. This was a plan that was approved in 2008 for this area. After some explanation, she noted that the applicant is meeting all buffering requirements.

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The following spoke in opposition to this request:

Walt Zolla, 203 Chadwick Glen Place, Louisville, KY 40245

Cathy Stich, 107 Ladbrooke Grove Road, Louisville, KY 40245

Miriam Johnson, 104 Ladbrooke Grove Road, Louisville, KY 40245

Summary of testimony of those in opposition:

01:51:01 Miriam Johnson said the majority of the dwelling units in the development are single-family homes; not condominiums, not patio homes. Her concern is that everything in the new proposal is the same or equal to the rest of the development – brick percentage, lot size equivalent, setback equivalent. Also, that this developer build the structures, not sell them off to a tract builder.

01:52:16 Cathy Stich said the square footage of the homes in section 3 is the condition of a lawsuit settlement agreement. The square footage for homes is 1800 sf to 2200sf in Section 3. She reviewed the history of the Notting Hills development, dues paid, legal action taken against the developer, and promises made by the developer that have not been kept (see recording for her detailed presentation). Mr. Lockett handed out paper copies of her presentation to the Commissioners. She said this proposal will result in increased density and loss of greenspace.

02:02:18 Walt Zolla, a resident of the Villas of Chadwick, discussed the most recent changes made to this subsection, beginning about two years ago. He said there is substantial change to the lot design as it is being presented today. He discussed the 20-foot setback and said there was some confusion as to where these homes would actually be located; also, the residents did not get an answer from Mr. Welch about how many stories would be on the garden homes.

02:07:12 Paul Whitty, legal counsel for the Planning Commission, said the testimony about oral and written agreements are legal arrangements between private parties. He said the Commission can only address this case from a Planning perspective.

Rebuttal:

02:08:01 Mr. Pregliasco showed an exhibit showing how the development, originally approved in 2001, has changed over the years. He said all of those changes came before the Planning Commission and were all approved on a case-by-case basis. He

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said the applicant is willing to add a binding element stating that what would be built would match the rest of the single-family lots and would be subjected to the same CC&R's as Section 3. They would have the 80% brick requirement. He discussed the lawsuit, which he said was about concerns were the number of lots sold to Ball Homes. See recording for detailed presentation.

02:12:26 Scott Welch, the developer, said the Commissioners "are hearing only one side of the story" regarding the lawsuit, deed restrictions, and architectural design. He discussed these items in detail.

02:15:27 Commissioner Brown asked if the developer is still meeting all of the open space requirements. Ms. Jones said there are no specific open space requirements for this section. However, the clubhouse is still right next door and all the open space requirements for this development are being met.

Deliberation:

02:16:34 Commissioners' deliberation.

02:21:43 Mr. Lockett discussed re-numbering / etc. of the binding elements listed 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.

Revised District Development Plan with Revisions to Binding Elements on pages 10-13 in the staff report

02:23:13 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that there are several sinkholes on the subject site. Appropriate engineering and mitigation will be required to construct on any lot with sinkholes. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community

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has been provided, and Metro Public Works has approved the preliminary development plan; and

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

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

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

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

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised District Development Plan with Revisions to Binding Elements on pages 10-13 in the staff report, **SUBJECT** to the binding elements as follows:

1. The development shall be in accordance with the approved Preliminary Subdivision Plan, detailed district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
2. There shall be no direct vehicular access from any single family or multi-family lot to US 60 (Shelbyville Road).
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3 feet 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

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place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

4. The applicant shall identify and submit for approval by designated PDS staff, a plan showing the location of the Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e. clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by PDS.
5. Before any permit (including but not limited to building, parking lot, change of use or 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 major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
6. If a building permit is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
7. 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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8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to commencement of any clearing, grading, or construction activities.
10. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
11. The site shall be developed in accordance with the Tree Canopy Protection Areas (TCPAs) delineated on the site plan and related notes. Any modification of the Tree Canopy Protection Areas requires notification of adjoining property owners and LD&T action.
12. The applicant shall provide deeds of restriction ensuring that TCPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of such restrictions shall be approved by the Planning Commission counsel.
13. All plans setting out TCPAs must contain the following note:
 - a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent portions of the site that shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction, or other land disturbing activity shall take place within designated TCPAs beyond pruning to improve the general health of the tree, to remove dead or declining trees that may pose a public health and safety threat, or as required by an agency to install utilities.

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14. Prior to the recording of the plat, copies of recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space and other issues required by these binding elements.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
15. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
16. The materials and design of the proposed manor style and patio home duplex and multifamily buildings shall be substantially the same as depicted in the rendering as presented at the February 26 and May 21, 2001 Planning Commission meetings. The manor style buildings shall include 80% brick. All other homes shall have a minimum of 80% exterior brick material, except as provided in Binding Element 26, which provides for 80% brick or stone exterior material on the 9 frontage lots adjacent to Shelbyville Road.
17. The signature entrance shall be submitted the Planning Commission staff for review prior to recording the record plat.
18. Prior to application for any land disturbing activity on the site, a geotechnical report, including a study of areas with slopes greater than 20%, shall be performed for review by MSD, Metro Public Works, and Planning & Design prior to approval of any construction plans.
19. The developer shall be responsible for constructing the road connection of Road A to the stub road In the Locust Creek development.
20. Open space lots shall not be further subdivided or developed for any other use, and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.

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21. Within the 200-foot parkway buffer, landscaping shall be installed of evergreen and deciduous shade and flowering trees as shown on the concept landscape plan discussed at the May 21 public hearing and as otherwise required by the Planning Commission, and there shall also be installed a four-board horse fence erected along the right-of-way of US 60 for the entire length of the frontage of the site.
22. The R-5A residential duplex and multifamily buildings shall be no closer to the new Shelbyville Road right-of-way line than as follows, proceeding in an east-west direction: the easternmost patio building no closer than 370 feet; the westernmost patio building no closer than 345 feet; the easternmost manor home building no closer than 370 feet; and the westernmost manor home building no closer than 365 feet.
23. Seven R-4 zoned frontage lots shall be created as shown on the development plan presented at the July 8, 2004 LD&T meeting for R-4 housing. The (7) frontage lot houses west of Road "A" shall front Shelbyville Road with access from the Court "A" frontage road. The (2) frontage lot houses east of Road "A" shall also face Shelbyville Road but have access from Court "B".
24. All 9 frontage lots shall run to the new Shelbyville Road right-of-way line; however, a landscape easement in favor of the New Estates Farm Community Association shall extend for a depth of 160 feet from the new Shelbyville Road frontage right-of-way line.
25. Homes constructed on the (9) frontage lots shall have exterior materials consisting of a minimum of 80% brick and/or stone. These (9) frontage lots shall have a front building setback line of not less than 200 feet from and parallel with the proposed new northern right-of-way line of US Highway 60, also known as Shelbyville Road.
26. Prior to development that may occur immediately behind the frontage lots; the developer shall install the infrastructure for, subdivide, plat, and record and market for sale such frontage lots along Shelbyville Road. The frontage lot houses need not be actually constructed before construction commences on the duplex and multifamily behind them, and the frontage lots and other portions of the subdivision may be platted together.
27. The 160 feet of setback described in Binding Element 24 above plus (2) open space lots along Shelbyville Road shall be maintained by the New Estates Farm Community Association.

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28. Binding Elements 22-28 above shall be included in the deed of restrictions for New Estates Farm as shall a provision requiring minimum square footages for the (7) frontage lot homes of 3,000 square feet of livable area for two-story and/or story and one-half and 2,750 square foot of livable area or ranch style homes. Livable area shall be defined as heated and cooled above ground level area, measured from outside wall to outside wall, specifically excluding below ground finished living area. Such deed of restrictions shall be reviewed by the Planning Commission's legal counsel prior to recording for compliance with these binding elements. Such deed of restrictions shall include a provision permitting enforcement of the provisions of binding elements 22-29 by the owners and successors in title of the following properties: 18700 US 60, 18702 US 60, 18704 US 60 and 18706 US 60 in Jefferson County and 10400 US 60 and 10260 US 60 in Shelby County.
29. Prior to requesting certificates of occupancy, the developer shall post street signs and address numbers.
30. The developer shall pay \$7500 of the cost of a new traffic signal at US 60 and Flat Rock Road.
31. Trees shall be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy calculations on the Preliminary Subdivision plan. The applicant shall submit for approval Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
32. The use of the clubhouse shall be restricted to property owners/residents of Notting HillsSubdivision and their guests.
33. Final surface pavement to be completed by developer prior to turnover to homeowner's association (case 13985, only).

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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Revised Major Preliminary Subdivision Plan

02:24:55 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised Major Preliminary Subdivision Plan.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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PUBLIC HEARING

CASE NO. 18ZONE1021

Request: Change in zoning from R-6 to C-R with a Waiver
Project Name: 841 East Washington Street
Location: 841 East Washington Street
Owner: Van Goat LLC
Applicant: Van Goat LLC
Representative: Van Goat LLC
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:53:07 Julia Williams presented the case and showed a Power Point presentation (see recording for detailed presentation.)

02:57:49 Commissioner Brown asked about the “no parking” area on Campbell Street, and also the parking calculations/reductions. Ms. Williams said the applicant did revise the plan to meet the parking calculations, and she showed the revised plan to the Commissioners.

The following spoke in favor of this request:

Nick Graziose, 1613 Rosewood Avenue, Louisville, KY 40204

Summary of testimony of those in favor:

02:58:17 Nick Graziose, the applicant, said this is a rezoning request to meet long-time existing uses.

02:59:45 In response to a question from Commissioner Jarboe, Mr. Graziose discussed possible uses – a small store, yoga studio, salon, or another small neighborhood-serving use.

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The following spoke in opposition to this request:

No one spoke.

Deliberation:

03:00:14 Commissioners' deliberation

03:02:13 Commissioner Carlson asked about binding element #4 regarding a Certificate of Occupancy. Ms. Williams explained that the applicant will still need a Certificate of Occupancy after the interior renovations are complete.

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

03:03:19 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution based on the Staff Analysis, Cornerstone 2020 Checklist, and the evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal does not affect the existing street pattern; the proposal is for an existing corner commercial building and will be providing a neighborhood serving use that is very appropriately located in an existing historic neighborhood; this proposal includes no new construction and is utilizing an existing building, therefore is not impacting any open space; it is located about four blocks from the Extreme Park; and the proposal is for the reuse of an existing historic building and it does not appear that any of the primary design features will be altered; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal will not create a new center but it involves the repurposing of an existing building; the Butchertown neighborhood is a historic urban neighborhood with sufficient population to support a small commercial use; the proposal is efficient and cost effective because it is utilizing an existing building; this proposal is not a center but does provide a service which will serve the neighborhood. It is also a mixed-use proposal; this proposal proposes residential above commercial; the proposal is not a larger development within a center; the proposal does not include any additional curb cuts; utilities for the site are existing; and the site has sidewalks and

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transit located in close proximity. TARC routes run along Main street, just one block south of the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because no new construction is proposed; this is historically a corner commercial building and has continued to operate as such so there is no expansion into a residential area; APCD has no issues with the proposal; this site is located in a historic neighborhood with good transit, sidewalk and roadway connectivity; no mitigation is required for an existing commercial use; lighting will meet LDC requirements; the proposal is located on a corner and there are nearby mixed uses and a transit route; the proposal will not be able to provide the required 10' landscape buffer area due to existing conditions, but this buffer is not necessary as this is a continued use of a historically corner commercial building; the proposal will not be able to provide the required 10' landscape buffer area due to existing conditions, but this buffer is not necessary as this is a continued use of a historically corner commercial building; the building is existing and meets form district requirements; there is no parking or loading areas proposed on site; there is no parking on site; street parking will be used; a parking garage is not proposed; and signs will meet LDC requirements; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because the provision of open space for this proposal is not required by the LDC and is not appropriate for this site; and as this is a previously developed site, any natural features of the site are being left intact; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because, as this is a previously developed site, any natural features of the site are being left intact; the proposal is for the adaptive reuse of an existing structure; and soils are not an issue for the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because this site is within an established neighborhood with existing vehicular, pedestrian and transit infrastructure; the proposal is not located in a downtown; the proposal is not for industrial; and this proposal is a commercial and residential use and is located near other non-residential uses, as well as one block away from Main Street, a major arterial; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because no roadway improvement requirements are anticipated; there is an existing sidewalk network and nearby transit stops; this proposal does not constitute additional transportation facilities, as it is a small site; dedication of right of way is not necessary in this location, as it is a developed site and the abutting

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right of way has an existing, sufficient network of sidewalks and roadways; parking will be provided on street; and cross access is not appropriate in this situation; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because a stub street is not necessary because the site is within an existing developed neighborhood; access to the development is through public rights of way; and the Butchertown neighborhood has an existing, consistent network of streets and sidewalks that provides appropriate linkages between activity areas; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because sidewalks are provided for transit users and pedestrians. Existing sidewalks are located along the street frontage and the structure is set close to the road; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because MSD has no issues with the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because APCD has no issues with the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because natural corridors are not evident in or around the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because existing utilities serve the site; water is available to the site; and the health department has no issues with the proposal; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-6 to C-R be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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PUBLIC HEARING

CASE NO. 18ZONE1021

Waiver from Chapter 10.2.4 to not provide a LBA or planting/screening materials along the west property line

03:04:28 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution based on the Standard of Review and Staff Analysis, and the evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the building is existing and there are no proposed changes to the outside of the lot or structure; and

WHEREAS, the Commission further finds that 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. The building is existing and there are no proposed changes to the outside of the lot or structure so the site is compatible with the adjacent property as it exists; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the building is existing and there are no proposed changes to the outside of the lot or structure; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the building is existing and there are no proposed changes to the outside of the lot or structure; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from Chapter 10.2.4 to not provide a LBA or planting/screening materials along the west property line.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Detailed District Development Plan with Binding Elements

03:05:28 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution based on the Standard of Review and Staff Analysis, and the evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints on the subject site. The existing building is a contributing structure in the existing Historic Preservation District; and

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

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

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area; and

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

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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 Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
4. 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.
5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
6. 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.

The vote was as follows:

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**YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis,
Brown, Howard, and Jarboe.**

NOT PRESENT: Commissioner Smith.

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PUBLIC HEARING

CASE NO. 17ZONE1041

Request: Change in zoning from R-4 & C-2 to M-2 and a Detailed District Development Plan with Waivers
Project Name: Hay Court
Location: 8325, 8329, and 8401 Nash Road and 711, 715, 717, 719, 801, 803, and 805 Hay Court
Owner: The Barnie R. Elder Living Trust
Applicant: The Barnie R. Elder Living Trust
Representative: Schroll Land Surveying
Jurisdiction: Louisville Metro
Council District: 13 – Vicki Aubrey Welch

Case Manager: Joel Dock, 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:

03:06:41 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) He reviewed the binding elements in the staff report.

The following spoke in favor of this request:

Bill Schroll, Schroll Land Surveying, 5450 Southview Drive, Louisville, KY 40214
Barnie Elder (property owner), 9702 Thixton Lane, Louisville, KY

Summary of testimony of those in favor:

03:10:17 Bill Schroll, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

03:17:21 In response to a question from Commissioner Carlson, Mr. Schroll said he authored the applicant's "Statement of Compliance". Regarding a statement in the third line, Mr. Schroll said that is an error – the single-family structures will be converted to a contractor's shop and a night watchman's quarters.

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03:18:57 In response to a question from Paul Whitty, legal counsel for the Planning Commission, Mr. Schroll said that no dust abatement was planned. He pointed out the paved areas on an aerial photo.

The following spoke neither for nor against ("Other"):

No one spoke.

The following spoke in opposition to this request:

Ty Schrenger, 8400 Nash Road, Louisville, KY 40214

Summary of testimony of those in opposition:

03:19:57 Ty Schrenger is representing his parents who own property across the street from the site. He said he is not opposed to the rezoning, but there is "severe" infrastructure issues that must be resolved first. His main concerns are flooding and drainage issues. He said no construction fencing or silt fencing was put up before the applicant mowed/bushhogged the area; he now has about 2 inches of mud on his property from a steep embankment because no silt fencing was installed first. He described conversations he has had with MSD. He is also concerned about large trucks running over the gravel driveways causing "massive" amounts of dust. He said his father runs a car lot across the street; since the vegetation barrier has been mowed down, there is now lots of dust settling on the vehicles.

03:24:39 Tony Kelly, representing MSD, discussed erosion control and verified that only mowing/bushhogging was being done. He stated that the whole area is in a floodplain. He said he has been working with Public Works about the size of the pipe and making downstream improvements to hopefully improve the small rain event drainage. He said this is the responsibility of MSD and Public Works, not the applicant. Commissioner Brown confirmed that this is something Public Works can take care of this before the end of this year.

03:26:33 Commissioner Jarboe asked if bushhogging is something a landowner can do without a permit/department approval. Mr. Kelly said that said bushhogging is permitted, but if an applicant is cutting down trees of any nominal size, that is different. It did not appear that the applicant was disturbing any ground. He said he sent an inspector to this site on Monday October 15th to ensure that MSD was policing erosion control. The inspector determined that it was all right as is and that silt fencing was not needed.

Rebuttal

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03:27:54 Mr. Schroll addressed some questions about the gravel. Using aerial photos, he pointed out surrounding lots that are all gravel. He said if there are problems with gravel lots, then there are problems with all lots on Nash Road and Hay Court. He added that the Land Development Code does allow for heavy truck parking on gravel lots.

03:29:19 Commissioner Lewis asked how often the trucks move – are they there for days, or do they move several times per week? In response, Bernie Elder, the property owner, answered questions about truck movements and parking on gravel. Mr. Elder said the bushhogging was done in response to complaints from another person in opposition that he wasn't taking care of his property. He said he has been bushhogging this property for about 10 years.

03:31:03 Commissioner Howard asked Mr. Schroll about a five-foot LBA that is shown on the development plan. She asked if the applicant is aware that they will need to provide a landscape plan. Mr. Schroll said he is aware of that and the applicant will provide the trees that are required along the LBA's.

03:31:36 In response to a question from Commissioner Carlson, Mr. Dock said APCD is a regular reviewed of plans and they did not note any issues or concerns with dust control/mitigation. Commissioner Howard said she suspected that APCD would not request pavement here because this area is in a floodplain, and pavement could make flooding worse.

Deliberation:

03:32:52 Commissioners' deliberation

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.

Zoning

03:34:16 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020 Checklist, and the applicant's justification and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposed district is supported by uses in the immediately surrounding area (auto salvage, warehousing, and

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manufacturing) and remains consistent with the zoning districts present in the area; the proposal integrates a use and zoning district that is supported by nearby uses requiring heavy trucks for the transport of goods or other industrial uses; the industrial zoning district, specifically the proposed use should be gated from access for safety; and in the event a new use is proposed requiring employment, the plan will be evaluated for its impact on pedestrian and transit connectivity; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because no new structures have been proposed; the site is not surrounded by a mixture of metal and concrete buildings serving multiple purposes for the uses from accessory garages to retail/office space and auto sales/repair; the proposal does not constitute an expansion into a residential area as the subject site and area is located in the SW form district; further, Commercial zoning districts operating auto repair, sales and/or salvage/junk yards exists to the North and South of the subject site; opposite Nash Road and in the immediately surrounding area industrial zoning districts are present; a large tract of vacant C-2, commercially zoned property also abuts to the North; no adverse odors or emissions not ordinarily expected in the area would occur as a result of the proposal; access will utilize National Turnpike which is an arterial roadway serving a large variety of industrial users; lighting will comply with LDC 4.1.3; the subject site is located north of the Outer Loop via national Turnpike, an arterial level roadway; Hay Court provides access through similar uses to the subject site from National Turnpike; the proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development; the proposed district is compatible with the area; the proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another; the proposed district is compatible with the area; setbacks, lot dimensions and building heights are compatible with those of nearby developments; parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians; the immediately abutting area is predominately industrial and the few remaining residential uses along Nash road are not consistent with the exiting or future growth of the area; the proposal includes screening and buffering of parking and circulation areas adjacent to the street as required landscape areas have been provided abutting Nash Road; no garages proposed; and signage will comply with Ch. 8 of the LDC; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because open space is not required and should not be provided, except in the form of tree canopy as the site should be restricted from the public; open space is not required and should not be provided, except in the form of tree canopy as the site should be restricted from the public; and a landscape plan will be provided and demonstrate compliance and preservation of trees; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because a landscape plan will be provided and demonstrate compliance and preservation of trees; buildings on-site will be repurposed; and MSD review and approval has been provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the proposed district is supported by uses in the immediately surrounding area (auto salvage, warehousing, and manufacturing) and remains consistent with the zoning districts present in the area; the site is not downtown; the proposed district is supported by uses in the immediately surrounding area (auto salvage, warehousing, and manufacturing) and remains consistent with the zoning districts present in the area; it is also supported by National Turnpike which provides convenient access to I-265 to the south of the subject site; primary access utilizes National Turnpike which provides convenient access to I-265 to the south of the subject site; and National Turnpike provides convenient access to I-265 to the south of the subject site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means; the industrial zoning district, specifically the proposed use should be gated from access for safety; in the event a new use is proposed requiring employment, the plan will be evaluated for its impact on pedestrian and transit connectivity; the proposal is along or near an arterial level roadway within close proximity to similar industrial activities and provides a supportive use to these industries; the proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development; the proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development; the types of uses proposed require facilities to be safe and secure from users outside the limits of the property; stub connections to adjacent properties may not be practical or appropriate due to the needs to safely secure the facilities; further, no structures are being proposed which require connections and the site is located in an area where the majority of abutting uses are built out; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because the types of uses proposed require facilities to be safe and secure from users outside the limits of the property; stub connections to adjacent properties may not be practical or appropriate due to the needs to safely secure the facilities; further, no structures are being proposed which require connections and the site is located in an area where the majority of abutting uses are built out; access to the site is through areas of similar uses and located in a Workplace

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form district; the uses proposed provided supportive uses to the industrial area; Hay Court provides access to an arterial level roadway; and no access to Nash Road will be provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the industrial zoning district, specifically the proposed use should be gated from access for safety; in the event a new use is proposed requiring employment, the plan will be evaluated for its impact on pedestrian and transit connectivity; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because there are no apparent natural corridors on the subject site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the proposal is located in an area served by existing utilities or planned for utilities; the proposal has access to an adequate supply of potable water and water for fire- fighting purposes; and the proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

(Applicant's Justification) WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1 – Community Form because it is located within adjoining commercial and industrially zoned properties. It utilizes existing structures and site conditions and eliminates the residentially zones properties that did not fit within the goals of the suburban workplace form district. This site will provide a contractors office, in a structure that was a single family residence, and heavy truck parking in an area that is along an area that has access to the regional transportation system; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2-Centers because the proposed zoning change will utilize the existing buildings and site conditions; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3-Compatibility because the proposed use of the site is compatible with the

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surrounding uses in the area. It is located along National Turnpike that is a mixture of commercial and industrial uses and that use National Turnpike as a connection to the nearby highway system. The property is located within a workplace from district; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6-Economic Growth and Sustainability because it encourages the industrial use of the property and takes advantage of the need for the proposed use in an area that has industrial subdivisions nearby; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7 & 8- Circulation and Transportation Facility Design because Hay Court is located just off National Turnpike which is a minor arterial in close proximity to the Outer Loop and Gene Synder Freeway, both major arterial roadways. The existing roadway system is adequate for this site and its proposed use; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10 & 11 - Flooding and Stormwater-Water Quality because the property will utilize the existing sewer and drainage facilities that are already in place. No additional impervious surfaces are proposed with this plan. The site is located within the 100-year flood hazard area, which will require special approval for any new construction; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14- Infrastructure because the subject site has existing access to utilities and water; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-4, Single-Family Residential & C-2, Commercial to M-2, Industrial be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver of Land Development Code, section 10.2.4 to allow truck maneuvering within 15' LBA

03:39:00 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as all planting material will be provided and abutting users are similar in intensity; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020 as the plan calls for appropriate transitions between uses that are substantially different in scale and intensity or density of development and the proposal provides all planting material required and abutting users are similar in intensity; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as all planting material will be provided and gravel is currently present; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as the Comprehensive Plan calls for appropriate transitions between uses that are substantially different in scale and intensity or density of development and the proposal provides all planting Material required and abutting users are similar in intensity; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of Land Development Code, section 10.2.4 to allow truck maneuvering within 15' LBA.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Detailed District Development Plan and binding elements

03:40:29 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Commission further finds that all landscaping plan will be provided which demonstrates tree canopy and landscaping compliance on the subject site; and

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WHEREAS, the Commission further finds that the proposed use will be gated and secured from public access for safety; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided on a landscaping plan that demonstrates tree canopy and landscaping compliance on the subject site; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area as industrial uses dominate the immediate vicinity; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan. The proposed use is supported by uses in the immediately surrounding area (auto salvage, warehousing, and manufacturing) and remains consistent with this area.. The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development as the proposed district is compatible with the area. Access will utilize National Turnpike which is an arterial roadway serving a large variety of industrial users. The use will be gated from public access for safety; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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 Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
 - 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 road closure application for portions of Hay Court as shown on the preliminary development plan shall be submitted. Said closure shall be approved and recorded within 6 months of final action by the Louisville Metro Council.
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.
6. The property shall be fully gated and secured from public access along all road frontages.
7. Heavy truck access shall be prohibited from Nash road.

The vote was as follows:

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YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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Request: Change in zoning from R-4 to C-1 with a Revised Detailed District Development Plan; Waivers; and a Street Closure
Project Name: Ghasem – Factory Lane
Location: 12910 Factory Lane
Owner: Ghasem Properties, Inc.
Applicant: Ghasem Properties, Inc.
Representative: William Bardenwerper – Bardenwerper Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 19 – Julie Denton

Case Manager: Joel Dock, 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:

03:41:34 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

03:46:55 In response to a question from Commissioner Brown, Mr. Dock noted that binding element 8H, on page 22 of the staff report, states that building renderings for all new structures and additions shall be approved by Planning Commission staff.

The following spoke in favor of this request:

William Bardenwerper, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway 2nd Floor, Louisville, KY 40223

Mark Madison, Bluestone Engineering, 301 Daventry Lane, Louisville, KY 40223

Summary of testimony of those in favor:

03:47:35 William Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He discussed why the road closure was needed.

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03:58:50 Mark Madison, an applicant's representative, discussed the VUA/LBA, the detention basin, and other landscaping details for the site.

The following spoke neither for nor against ("Other"):

No one spoke.

The following spoke in opposition to this request:

Cliff Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

Summary of testimony of those in opposition:

04:01:14 Cliff Ashburner spoke on behalf of the opposition (R.J. Thieneman & Company) and showed a Power Point presentation. He said his clients own the property to the east (zoned R-4.) He said the primary concerns are that this property is being overdeveloped, that too many waivers are being requested; and that the applicant will not follow through with binding elements. See recording for his detailed presentation.

04:03:33 He discussed binding element #14 regarding a crossover access easement involving the property to the east. He suggested a change to binding element #14, to read as follows:

The property owner shall provide a crossover access easement if the property to the east is ever re-developed for a non-residential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

04:04:49 Mr. Ashburner asked why the above suggested binding element is not listed under binding element #8F?

04:05:48 In response to a question from Commissioner Jarboe, Mr. Ashburner said his concern about the property being "overbuilt" is related to the specific subject site, not the general area.

04:06:38 Commissioner Brown and Mr. Ashburner discussed some issues regarding the older development plan (2000 plan) that had a prohibition on access (see recording for detailed discussion.)

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04:07:21 Mr. Dock said binding element #14 was written and intended for a different property to the east, not the Thieneman property. Mr. Bardenwerper said the cross-access should apply to any adjoining properties.

Rebuttal:

04:08:07 Mr. Bardenwerper discussed the Thieneman property and said the applicant has offered to buy it; also, the applicant will be doing road public road improvements at his expense. He reiterated that, if anything is built on that property, they would have access through the center per binding element.

04:10:37 Commissioner Carlson and Mr. Dock discussed binding element #14 and how it should read. Mr. Bardenwerper agreed to the revised binding element. The agreed-upon binding element should read:

14. The property owner shall provide a crossover access easement if any adjacent property is ever re-developed for a non-residential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

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.

04:11:57 Commissioners' Deliberation

Change in Zoning

04:14:24 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution based on the Cornerstone 2020 Checklist, the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal integrates into the pattern of development as nearby users are non-residential and the layout of the site is similar to these existing uses; landscape areas are being provided adjacent to the public road and throughout the site; the proposal integrates into a mixture of related uses with cross-connectivity being provided and the layout being similar to these existing uses; the proposal incorporates connected roads; the proposal encourages access to public

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transportation, and provides for pedestrians as walks from public ways for pedestrians and vehicular cross connectivity between the adjacent sites will be provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because the proposed building materials will be consistent with existing development; the proposal does not constitute a non-residential expansion into an existing residential area the site abuts non-residential zoning districts and a vacant parcel of residentially zoned property abutting the public right-of-way and the site; the proposed land use would not appear to generate any greater adverse impact from odor or emissions than found among for adjacent users; the location supports the potential traffic demand of the use as the site is located within a cluster of similar uses and within close proximity to an interstate which may reduce travel on other roadways; lighting will be in compliance with the LDC; the intensity of the proposed use is appropriately located with immediate access to an arterial level roadway and the interstate from a collector level road; uses abutting the site are not substantially different in scale and appropriate landscaping will be provided; the proposal is compatible with surrounding developments and provides for appropriate transitions between these similar uses with landscaping and common design; setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards as all landscaping material will provided and setbacks are consistent with current abutting development; parking, loading, and delivery areas do not impact views from residential areas as they do not immediately abut or face residential properties; the proposal includes screening and buffering of parking and circulation areas adjacent to the street; no parking garages are proposed; and signs will be in conformance with Chapter 8 of the Land Development Code; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because the proposal does not require the provision of open space; the proposal does not require the provision of open space and is located in the workplace form; and there do not appear to be any natural features of significance and landscaping will be provided adjacent to the Gene Snyder freeway; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because there do not appear to be any natural features of significance and landscaping will be provided adjacent to the Gene Snyder freeway; the demolition of the structures could have an adverse effect on sites potentially eligible for the National Register. Guideline #5 under Community Form/Land Use (Table #3) in the Cornerstone 2020 Comprehensive Plan stresses the protection of historic resources. Historic Preservation staff recommends adaptive re-use of the structure instead of demolition; the structures are over 65 years, if determined eligible for the National Register as per Wrecking Ordinance Section 150.110 - there will be a required 30-day hold on the issuance of the permit; historic

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resource documentation should be provided to preserve a record of the community's past; and the proposed development site does not appear to contain wet or highly permeable soils, or other features of concerns; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the subject site is located in an area containing a mixtures of commercial, office, and industrial uses, and proposes the same; the subject site is not downtown and is not an industrial use; and the subject site is conveniently located within close proximity to Interstate-265, nearby industrial or employment centers, and along an intersection with a major arterial roadway; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means; sidewalks and pedestrian connections, as well as increased pavement width will be provided; the proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as pedestrian ways have been provided to connect with public walks; the proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands Cross-connectivity is provided and future cross connectivity will be provided to the East; the proposal includes the dedication of rights- of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development; parking is sufficient; and the proposal provides for joint and cross access through the development and to connect to adjacent development sites as cross-connectivity is provided and future cross connectivity will be provided to the East; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land as connectivity with "Old factory Lane" will be maintained and access to adjacent lands will be facilitated as needed; access to the subject site is through areas of similar intensity; and the development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and

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intensity as pedestrian ways and connections have been provided, bike parking is available, and the site is within proximity of TARC service; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because no natural corridors are present on site. Landscaping will be provided adjacent to the Gene Snyder Freeway; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because utilities would appear to be available or will be provided as the site is in an area of existing development; the proposal has access to an adequate supply of potable water and water for fire- fighting purposes; and the proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1 – Community Form because the subject property is located in the Suburban Workplace Form District and, although this may seem a bit of an oddity for this retail activity center interchange outside the Snyder Freeway at LaGrange Rd. at its intersection with Factory Lane and Chamberlain Lane, the Suburban Workplace Form District designation exists because of the Snyder Freeway and the large Eastpointe Business Center to the south; even though what is proposed is a retail center, there is no reason to change the form district designation because what exists works here and because furthermore other non-workplace uses are also located within this particular Suburban Workplace Form District within this retail activity center area outside the Snyder Freeway; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2 – Centers because the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Guideline because this site is within an existing activity center; it also exists along corridors where major support population exists; as an add-on to an existing small retail center, the two together are compact and will contain a mixture of acceptable/desirable retail and office uses, complimentary to what exists in the area; there is no other practical use of this property than what is proposed; the users in these two, essentially combined centers will share

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parking; utilities already exist for extension into this site; and they will also share points of access, such that traffic can better enter and exit utilizing both Lagrange Rd. and Factory Lane; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3 – Compatibility because the application complies with the Intents and applicable Policies 1, 2, 5, 6, 7, 8, 9, 12, 20, 21, 22, 23, 24, 28 and 29 of this Guideline because the design of this small addition to the existing retail center will be compatible with that one and the larger one that exists across Factory Lane from this site because of its location at the Snyder Freeway interchange with LaGrange Rd.; issues of noise, odors and other nuisances are not a question at this high traffic interchange location; lighting will comply with Land Development Code (LDC) standards; accessibility and access will be in accordance with the law and specific Metro Public Works requirements; transitions, buffers, setbacks and landscaping will comply with LDC standards for, where appropriate, LDC waiver provisions; as said, parking will be shared, and loading and delivery will be appropriately located; signs will comply with the LDC; and much of this is evident on the Detailed District Development Plan (DDDP) and related Revised Detailed District Development Plan (RDDDP) accompanying this application; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6 – Marketplace because the application complies with the Intents and applicable Policies 1, 2 and 6 of this Guideline because this location is essentially an infill activity center location where a large support population exists and thus, it represents a good opportunity for continued economic development for the area; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 7, 8, and 9 – Circulation, Transportation Facility Design and Bicycle, Pedestrian and Transit because the application complies with the Intents and applicable Policies 1, 2, 3, 9, 10, 11, 13, 14 and 15 of Guideline 7, Policies 5, 8, 9, 10 and 11 of Guideline 8 and Policies 1, 2, 3 and 4 of Guideline 9 because the DDDP and RDDDP accompanying this application provides for good access off Factory Lane and LaGrange Rd. to the proposed combined retail centers with good cross connections and internal circulation as well; parking will be shared; access at Factory Lane will be wide enough to satisfy Metro Public Works requirements; site distances for ingress and egress will be sufficient; bike racks will be provided in conformance with LDC requirements; sidewalks and other pedestrian accommodations will be made as necessary; TARC service is available along LaGrange Rd; and old Factory Lane will be improved as shown on the DDDP to comply with Metro Public Works design standards; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 10 and 11 – Flooding, Stormwater and Water Quality because the

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application complies with the Intents and applicable Policies 1, 3, 6, 7, 10 and 11 of Guideline 10 and Policies 1 and 5 of Guideline 11 because a detention basin is shown on the accompanying DDDP; other than that, all MSD regulatory requirements for stormwater and water quality will be satisfied on the construction plans following DDDP and RDDDP approvals; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13 – Landscape Character because the application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline because all tree canopy and landscape regulatory requirements of the LDC will be complied with, except to the extent that certain waivers accompanying this approval are also granted because landscape buffers can be enhanced to mitigate same; and

WHEREAS, the Commission further finds that the proposal meets the intents of all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Change-in-Zoning from R-4, Single-Family Residential to C-1, Commercial as described in the attached legal description, be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Street Closure – 18STREETS1013

04:15:31 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that adequate public facilities are available to serve existing and future needs of the community. Easements will be provided prior to recording the street closure plat for each utility agency requesting the retention of their services within the area of the closure; and

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WHEREAS, the Commission further finds that easements will be provided prior to recording the street closure plat for each utility agency requesting the retention of their services within the area of the closure; and

WHEREAS, the Commission further finds that any cost associated with the rights-of-way to be closed will be the responsibility of the applicant or developer, including the cost of improvements to those rights-of-way and adjacent rights-of-way, or the relocation of utilities; and

WHEREAS, the Commission further finds that the request to close multiple rights-of-way is in compliance the Goals, Objectives and Plan Elements of the Comprehensive Plan as Guideline 7, Policy 1 provides that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development; Guideline 7, Policy 6 strives to ensure that transportation facilities of new developments are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands; Guideline 7, Policy 9 provides that the Planning Commission or legislative body may require the developer to dedicate rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development as set forth in the Land Development Code and/or an adopted urban mobility plan; Guideline 8, Policy 8 states that adequate street stubs for future roadway connections that support access and contribute to appropriate development of adjacent lands should be provided by new development and redevelopment; and Guideline 14, Policy 7 provides that the design and location of utility easements provide access for maintenance and repair and to minimize negative visual impacts. The roadway is being repurposed to serve a private development in a similar fashion to its current purpose. Improvements will be made along sections of the roadway to remain open and access to developed lands and future development will be provided. Requested easements will be provided; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Street Closure be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waivers

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1. Waiver of Land Development Code, section 5.8.1.B to not provide sidewalks along Old Factory Lane (un-named in LOJIC)
2. Waiver of Land Development Code, section 10.2.4 to allow encroachments for parking and maneuvering in 15' LBA (East property line)
3. Waiver of Land Development Code, section 10.2.12 to reduce 10' VUA LBA to 5'
4. Waiver of Land Development Code, section 10.3.7.A to allow encroachments for building and parking in 50' Gene Snyder Freeway buffer

04:16:29 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution, based on the Standard of Review and Staff Analysis, and the applicant's justification, and evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as "Old Factory Lane" does not serve a significant public purpose in providing access to adjoining development or the subject site. Factory Lane is the primary roadway providing primary access to multiple sites and the development plan demonstrates pedestrian connectivity to this roadway from existing segments of public sidewalks having frontage along the development. Any future sidewalk construction would be most appropriate to occur on Factory Lane which does not directly adjoin the site; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 7 calls for the proposal to include the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development. It also calls for transportation facilities to be compatible with and support access to surrounding land uses, and contributes to the appropriate development of adjacent lands Guideline 9, Policy 1 calls for the provision of the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops. The proposed waiver does not reduce pedestrian or transit connectivity as pedestrian ways are shown through the development and transit connectivity is provided nearest to the route along La Grange Road. The requirements for pedestrian connectivity are met through these connections. The site does not immediately adjoin Factory Lane where a sidewalk would be most appropriate; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as "Old factory Lane" does not serve a significant public purpose in providing access to adjoining development or the subject site and the location where a future sidewalk is most needed does not immediate adjoin the development site; and

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WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as “Old factory Lane” does not serve a significant public purpose in providing access to adjoining development or the subject site and pedestrian connections to meet the minimums of the district have been provided; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because internal sidewalks are mostly provided where practically important; 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 application and in the findings of fact relating thereto; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because not all of the sidewalks are being eliminated; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because constructing sidewalks where not shown on this plan add nothing of practical convenience or necessity; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as all required planting and screening material will be provided; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. All required planting and screening material will be provided and the adjacent property is zoned for office-residential uses; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the encroachments are minimal and all required planting and screening material will be provided; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the

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encroachments are minimal and all required planting and screening material will be provided; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because the sites to the east and west adjoining this one next to the Snyder Freeway are related commercial and office sites; the encroachments are minimal and have no aesthetic or other negative impacts on anyone because of the nature of the adjoin uses; and the stairwell is needed for safety purposes; and

WHEREAS, the Commission further finds that 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 application and in the findings of fact relating thereto; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because most of the required setback and perimeter landscaping is still provided, and these encroachments allow this site to be productively developed in something other than an impractical manner; and

WHEREAS, the Commission further finds that the 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 applicant would otherwise have a very difficult time developing this property in a practical manner; and

(Waiver #3) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as there are no abutting properties that will be adversely affected and sufficient landscape spacing is provided between the parking areas and pavement; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. There are no abutting properties that will be adversely affected and sufficient landscape spacing is provided between the parking areas and pavement. All planting material will be provided; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as additional right-of-way has

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been requested and landscaped areas will still be provided, including all planting material; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as additional right-of-way has been requested and landscaped areas will still be provided, including all planting material; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because enhanced landscaping can be provided both within the LBA and within the ROW along the old Factory Lane to mitigate any potential aesthetic impacts, which don't appear to exist here anyway because of the proposed improvements to this property; and

WHEREAS, the Commission further finds that 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 application and in the findings of fact relating thereto; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because most of the required setback and perimeter landscaping is still provided, and this encroachment allow this site to be productively developed in something other than an impractical manner; and

WHEREAS, the Commission further finds that the 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 applicant would otherwise have a very difficult time developing this property in a practical manner; and

(Waiver #4) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the landscape buffer request does not impact abutting property owners and allows for consistent building setbacks along the interstate; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. All required planting material and screening will be provided. The setback requested is consistent with existing development and the

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area of encroachment is located adjacent to instate ramp and not the primary drive lanes of the interstate. Detention/retention facilities are necessary to serve the development; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the request is a result of the proposed development and the shape and size of the existing lots. Further the encroachments are located along an exit ramp and the setback is consistent with existing development; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as detention/retention facilities are necessary for storm water management, the shape and size of the lots limits full compliance for the proposed development, and the setback is consistent with existing development; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because the sites to the east and west adjoining this one next to the Snyder Freeway are related commercial and office sites; and other properties along the Snyder Freeway have been approved for development with waiver encroachments into the Snyder Freeway setback where added landscape screening can be provided; and

WHEREAS, the Commission further finds that 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 application and in the findings of fact relating thereto; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because about two-thirds of the required setback is still provided, as is enhanced and deeper buffer landscaping in some areas, and this encroachment allows this site to be productively developed in something other than an impractical manner; and

WHEREAS, the Commission further finds that the 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 applicant would otherwise have a very difficult time developing this property in a practical manner; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby APPROVE the requested Waivers as follows:

1. **Waiver of Land Development Code, section 5.8.1.B** to not provide sidewalks along Old Factory Lane (un-named in LOJIC)
2. **Waiver of Land Development Code, section 10.2.4** to allow encroachments for parking and maneuvering in 15' LBA (East property line)
3. **Waiver of Land Development Code, section 10.2.12** to reduce 10' VUA LBA to 5 feet
4. **Waiver of Land Development Code, section 10.3.7.A** to allow encroachments for building and parking in 50' Gene Snyder Freeway buffer

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Revised Detailed District Development Plan AND Detailed District Development Plan and Binding Elements

04:18:11 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution, based on the Standard of Review and Staff Analysis, and the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. All landscape material required will be provided and adequate buffering has been established between uses. The subject site contains a structure that is potentially eligible for National Register. Documentation of this structure and a 30-day hold will be placed upon this structure prior to demolition; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the proposal incorporates connected roads, encourages access to public transportation, and provides for pedestrians. Pedestrian ways and connections have been provided, bike parking is available, and the site is within proximity of TARC service. The Subject site is conveniently located within close proximity to Interstate-265,

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nearby industrial or employment centers, and near an intersection with a major arterial roadway; and

WHEREAS, the Commission further finds that the proposed development does not require the provision of open space. All landscape material is provided and adequate buffering has been demonstrated; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that setbacks, lot dimensions and building heights are compatible with the existing and projected future development of the area as landscape areas are being provided adjacent to the public road and throughout the site and setbacks are consistent with current abutting development; and

WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified. The proposal integrates into the existing pattern of development as nearby users are non-residential and the layout of the site is similar to these existing uses. Landscape areas are being provided adjacent to the public road and throughout the site. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards. All landscaping material will be provided and setbacks are consistent with current abutting development. The proposal incorporates connected roads, encourages access to public transportation, and provides for pedestrians as pedestrian ways and connections have been provided, bike parking is available, and the site is within proximity of TARC service. The Subject site is also conveniently located within close proximity to Interstate-265, nearby industrial and employment centers, and near an intersection with a major arterial roadway; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised Detailed District Development Plan AND Detailed District Development Plan; **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.

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2. An Individual Historic Resource Survey Form shall be completed for any historic resources (structures over 65 years old) on the subject site. The documentation must occur prior to the issuance of a demolition permit or ground disturbance at the site. The documentation shall be submitted to Urban Design/Historic Preservation Staff upon completion.
- 3.. Signs shall be in compliance with Ch. 8 of the Land Development Code.
4. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
5. There shall be no outdoor storage sales, or display on the site.
6. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff and height of the light standard shall be set so that no light source is visible off-site.
7. 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.
8. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c.. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Land Development Code, 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site

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disturbance.

- e. A minor plat ~~or legal instrument~~ creating the lots as shown on the approved district development plan shall be recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - f. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - g. A road closure for a portion of "Old Factory Lane" as shown on the development plan shall be recorded prior to requesting a building permit. Easements will be provided prior to recording of the street closure for each utility agency requesting the retention of their services within the area of the closure
 - h. Building renderings for all new structures and additions shall be approved by Planning Commission staff
9. 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.
10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system.
11. 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.

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12. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. A copy of said plan shall be provided to Planning and Design Services for incorporation into the record.
13. The materials and design of proposed structures shall be substantially the same as depicted in the renderings as presented at the November 2, 2000 & October 18, 2018 public hearings of the Planning Commission.
14. The property owner shall provide a crossover access easement if any adjacent property is ever re-developed for a non-residential use. A copy of the signed access easement agreement shall be provided to Planning Commission staff upon request.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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CASE NO. 18ZONE1043

Request: Change in zoning from R-5 to C-2 with a Conditional Use Permit for outdoor alcohol sales and landscape waiver
Project Name: 1039 Ash Street
Location: 1039 Ash Street
Owner: Jeffrey J. and Rebecca L. Hollcamp
Applicant: Jeffrey J. and Rebecca L. Hollcamp
Representative: Clifford Ashburner – Dinsmore & Shohl LLP
Jurisdiction: Louisville Metro
Council District: 10 – Pat Mulvihill

Case Manager: Joel Dock, 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:

04:19:56 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

04:22:59 Commissioner Jarboe said that an additional binding element would have to be added to this case (and others like it) regarding hours of operation. Why is this not already included in the staff report? Mr. Dock said that, at LD&T, hours of operation were discussed but were not agreed upon. He said the applicant stated that they would have that information at today's public hearing.

The following spoke in favor of this request:

Clifford Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

Summary of testimony of those in favor:

04:23:52 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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The following spoke neither for nor against (“Other”):

No one spoke.

The following spoke in opposition to this request:

Leila Faucette, 1017 Ash Street, Louisville, KY 40217

Summary of testimony of those in opposition:

04:28:12 Leila Faucette said a lot of weight is being given to the fact that this property has been used as commercial, so it wouldn't be a problem to change the zoning from R-5 to C-1. She discussed prior commercial uses, but said there have not been retail uses. She said evening hours could raise issues with noise and parking. She said this is not a very big building and the proposed outdoor service area is “tiny”.

04:31:04 Regarding hours of operation, Commissioner Carlson asked Ms. Faucette if there was a closing time she would be more comfortable with. She said 1:00 a.m. is very late. Also, she said this proposed outdoor seating is not the same as other businesses/restaurants with outdoor seating. She noted that other businesses have their outdoor seating completely separated from the street and the neighborhood. She said this is “right on top of the sidewalk”. She said she would be in favor of a coffee shop use.

Rebuttal:

04:32:25 Mr. Ashburner said there seemed to be support in the neighborhood, especially since one of the co-owners lives next to the property. He said the Code allows for a 1:00 a.m. closing time. (See recording for his detailed presentation.)

04:34:32 In response to a question from Commissioner Jarboe, Mr. Ashburner and some of the Commissioners discussed the seating capacity.

04:35:49 Mr. Ashburner requested relief from Conditional Use Permit requirement “E”. He said the applicant will *not* have 100 seats in the facility. In response to a question from Paul Whitty, legal counsel for the Planning Commission, Mr. Dock said this request is NOT a “waiver” but is a relief from a Conditional Use Permit requirement.

04:37:38 Commissioners' Deliberation

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04:39:53 Commissioner Tomes asked to discuss when it's appropriate to cut off outdoor alcohol sales outside. After much discussion, it was decided to add a binding element.

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

04:54:31 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Cornerstone 2020 Checklist, the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal utilizes the existing grid pattern by providing access to public streets and the rear alley; the proposal introduces an appropriately located neighborhood center including a mix of neighborhood-serving uses such as offices, shops and restaurants as it provides a neighborhood service and amenity commonly found in the area and one that would have been established in a previously constructed non-residential structure; the proposal does not eliminate any existing public open space on-site. The proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit.; and the proposal will renovate the existing facilities to accommodate the use; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal will renovate the existing facilities to accommodate the use; sufficient population in the area exists to support a large variety of non-residential uses; the proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment as existing structure will be utilized and utilities are available; the proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place as the neighborhood is walkable and contains a scattering of neighborhood serving uses located among the residential properties. The proposed district and use are compatible with the neighborhood; the proposed district does not preclude the ability to provide mixed-use; the proposal is located on a small corner lot with an existing non-residential structure; no significant site improvements are proposed; the subject site does not present options for shared facilities as it abuts single-family residential; utility connection would appear to be available as the site is in

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the Urban Services District; and the proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because no significant site improvements or changes to the existing structure have been suggested. All future changes shall meet the design guidance of the Land Development Code; the proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated as the structure was previously constructed for non-residential purposes and used non-residential; the proposal revitalizes an existing neighborhood serving use at a scale and intensity appropriate for the neighborhood; the proposal mitigates any potential odor or emissions associated with the development as refuse collection is located in the rear alley; the proposed use is located in a walkable urban neighborhood and is a minimal scale that does not appear to produce any adverse impacts on traffic; lighting will comply with LDC 4.1.3.; the proposal is located along local roads near an activity corridor; the proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development as existing conditions and structures provide a buffer of this use which is contained within a structure, except a small outdoor patio which faces the public street; the proposal is being located within an existing structure intended to serve the neighborhood. The intensity of the development is compatible with surrounding uses; no site improvements are proposed. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards; sufficient parking is provided to serve the development; off-street and on-street parking is utilized to meet parking demand. Off-street facilities are located at the rear alley in an area which is typically reserved for accessory uses such as those provided; no parking garages proposed; and signage will be compliant with Ch. 8 of the LDC; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because open space is not a requirement or necessity of the project. An outdoor patio has been provided; and there are no apparent natural features on-site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because there are no apparent natural features on-site; the existing structure is being repurposed to accommodate the user; and the development site does not appear to contain wet or

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highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the subject site is well-connected to surrounding population and nearby employment centers. While the subject site is not located downtown, it is located in an urban neighborhood near downtown and constitutes redevelopment and revitalization; The proposal is not an industrial development; and the use is located within close proximity to an activity corridor and would not appear to generate large amount of vehicle trips given the size of the facility and the nearness to population within a walkable neighborhood; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means; the proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; the existing roadway network is sufficient to support the use. Connection to adjacent lands would be inappropriate; no additional right-of-way has been required; the proposal includes adequate parking spaces to support the use; and cross access would be inappropriate; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because no stub streets required per this application; the proposal is slightly removed from a major roadway and activity corridor and access would be from these areas; and the development does not necessitate any new roadways; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because no natural corridors are apparent on-site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the proposal is located in an area served by existing utilities or planned for utilities; there would appear to be an adequate supply of water as it is located in the Urban Services District; and there would appear to be an adequate means of sewage treatment as it is located in the Urban Services District; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1 – Community Form because the subject property is located in the Traditional Neighborhood Form District, which may contain "appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants, and services." The subject property has had commercial uses for years, most recently as a chiropractor's office. The proposal is to redevelop and revitalize the subject property as a small cafe-style restaurant operated by the neighboring landowner, who is a local restaurateur. The proposed reuse of this property as a restaurant is consistent with the proposed C-1 zoning district and the intent and policies of Guideline 1 as it will provide a neighborhood service and amenity commonly found in the walkable Schnitzelburg neighborhood. Conforming and non-conforming commercial uses are nearby, including two non-conforming commercial bar uses directly across Ash Street from the subject property, and commercial uses along the Goss A venue activity corridor two blocks to the north; and

WHEREAS, the Commission further finds that the proposal meets the intent and applicable policies of Guideline 2, Centers because the proposal is for the reuse of the existing building as a small cafe-style restaurant. The proposed use is consistent with other neighborhood-serving commercial uses in this walkable neighborhood, including the two non-conforming bar uses directly across Ash Street and the commercial uses to the north along Goss A venue; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 3, Compatibility because the proposal will not cause adverse traffic, noise, odor, parking, or visual impacts to the surrounding residences. The small size of the existing building to be reused limits the potential for traffic and parking impacts, and the applicant will provide the required number of parking spaces

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through a combination of on-street parking along Ash Street and Hickory Street and off-street parking spaces in the rear of the subject property accessible from the alley along Hickory Street. Refuse will be stored at the rear of the property near the alley and appropriately screened to mitigate visual and odor impacts to surrounding residences. The proposal includes minimal renovation to the exterior of the existing building. The existing patio along Hickory Street will be redeveloped into a small outdoor seating area that will be screened by a 3' barrier as required by Land Development Code Chapter 4.2.41. The applicant will comply with all codes and regulations regarding operating hours and noise limitations to mitigate noise and light impacts. The neighboring landowner, who is a local restaurateur, will operate the proposed restaurant; and

WHEREAS, the Commission further finds that the proposal meets the intents of applicable policies of Guideline 4, Open Space, and Guideline 5, Natural Areas and Scenic and Historic Resources. The subject property is an already-developed site and proposes a commercial use that does not require open space, and no historical resources are located on the site; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 6, Economic Growth and Sustainability. The proposal is to redevelop and revitalize an existing building into a neighborhood-serving commercial use. The proposed restaurant is natural fit for this walkable neighborhood that is already home to a number of restaurants, bars, and other commercial uses along Ash Street and Goss Avenue; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 7, Circulation, and Guideline 8, Transportation Facility Design, and Guideline 9, Bicycle, Pedestrian, and Transit. The subject property is located two blocks from a major arterial road and activity center, Goss Avenue, and is well-served by the existing road infrastructure and public transit. TARC stops are located nearby at the intersection of Texas Avenue and Goss Avenue. The subject property provides amenities to promote bicycle and pedestrian use as bike facilities will be provided, an existing ramp provides ADA access, and the existing sidewalks are five feet wide; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10 – Flooding and Stormwater and Guideline 11 – Water Quality. The proposal should have very little impact, if any, on the surrounding waterways, complying with the intent and applicable policies of Guideline 10, Flooding and Stormwater, and

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WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 12, Air Quality. The proposal should have no negative impact on traffic or air quality based due to its location near an existing activity center on Goss Avenue and the small size of the existing building that will be reused; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Change-in-Zoning from R-5, Single-Family Residential to C-1, Commercial be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Conditional Use Permit and Relief From Section “E”

04:55:52 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal is consistent with the Comprehensive Plan as the proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood. The proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit and a sufficient population in the area exists to support a large variety of non-residential uses. The outdoor area is limited in scale and consistent with outdoor dining areas in the neighborhood; and

WHEREAS, the Commission further finds that the proposal is compatible with surrounding uses and the general character of the form district as the proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood; and

WHEREAS, the Commission further finds that the necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

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WHEREAS, the Commission further finds that the proposal complies with the following specific standards required to obtain the conditional use permit requested. Outdoor alcohol sales and consumption and/or indoor live entertainment for a restaurant may be permitted in the C-1 zoning district upon the granting of conditional use permit and compliance with the listed requirements:

A. All outdoor areas for the sale and consumption of alcohol must have designated boundaries.

B. Outdoor dining areas within the public right-of-way must receive approval from the agency responsible for transportation engineering and shall be designed in accordance with agency standards.

C. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.

D. Outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The continuous screen shall be in conformance with the Chapter 10, Part 4 (Implementation Standards).

~~E. This conditional use permit shall be limited to restaurant uses in the C-1 that hold the following types of ABC licenses:~~

~~1. Restaurant liquor and wine license by the drink for 100 plus seats~~

~~2. Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales.~~

F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1:00 A.M.

G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).

H. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant.

Now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit with relief from item “E”

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver of LDC, section 10.2.4 to eliminate 15’ LBA along west property line

04:57:09 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the existing structure is being utilized and the request is a result of exiting conditions. Encroachments at the rear are consistent with the purpose of accessory use areas found throughout traditional neighborhoods; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The character of residential areas are preserved as the proposal revitalizes an existing structure built for non-residential purposes and the request is a result of existing conditions; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the request is a result of existing conditions and refuse collection areas have been located to reduce the impact on public roads and pedestrian ways in an area consistent with the pattern of development in the area; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the request is a result of existing conditions and the relocation of refuse collection from this area may result in adverse impacts on pedestrian ways; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of LDC, section 10.2.4 to eliminate 15' LBA along west property line.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Detailed District Development Plan with addition of binding element #7

04:57:58 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. The site was previously developed and the proposal will revitalize the existing structure.

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit. An existing ramp provides ADA access and sidewalks are of sufficient width; and

WHEREAS, the Commission further finds that open space is not a required component of the development. An outdoor patio is provided; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the development is compatible with existing land uses and the future growth of the area as the structure was previously constructed for non-residential purposes and used for non-residential purposes. The

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proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood; and

WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan. The proposal provides a neighborhood service and amenity commonly found in the area and one that would have been established in a previously constructed non-residential structure on site. It does not constitute a non-residential expansion into an existing residential area as the structure was previously constructed for non-residential purposes and used for non-residential purposes. The proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood. The proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit and a sufficient population in the area exists to support a large variety of non-residential uses. It is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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 Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways or the Department of Public Works for all work within the right-of-way
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.
 6. 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.
 7. The use of outdoor dining areas for the sale and consumption of alcohol shall cease on Sunday through Thursday at 12:00 midnight, and the outdoor sale and consumption of alcohol on Fridays and Saturdays shall cease at 1:00 a.m.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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STANDING COMMITTEE REPORTS

Land Development & Transportation Committee

No report given.

Site Inspection Committee

No report given.

Planning Committee

No report given.

Development Review Committee

No report given.

Policy & Procedures Committee

No report given.

CHAIRPERSON/DIRECTOR'S REPORT

No report given

ADJOURNMENT

The meeting adjourned at approximately 6:00 p.m.

Chairman

Division Director