

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
August 21, 2014**

A special meeting of the Louisville Metro Planning Commission was held on Monday, August 21, 2014 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Donnie Blake, Chair
David Proffitt, Vice Chair (left at 3:45 p.m.)
Jeff Brown
Vince Jarboe
Carrie Butler
Robert Peterson
Robert Kirchdorfer
David Tomes
Clifford Turner

Commission members absent:

Chip White

Staff Members present:

Emily Liu, Director, Planning & Design Services
Jonathan Baker, Legal Counsel
John G. Carroll, Legal Counsel
Jessica Wethington, Planning Information Specialist
Julia Williams, Planner II
Joseph Reverman, Planning Supervisor
Matthew Doyle, Planner I
April Robbins, Code Enforcement Supervisor
Tammy Markert, Transportation Planning
Chris Cestaro, Management Assistant (minutes)

Others:

The following matters were considered:

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Approval of Minutes

July 28, 2014 – 6:00 p.m. Planning Commission Special Meeting

Discussion:

00:03:46 John Carroll, legal counsel for the Planning Commission, said the County Attorney's Office has received an objection to the minutes from the attorneys representing Masonic Homes. The primary objection is that the Commission "improperly relied on Comprehensive Plan documents." The Masonic Homes attorney wanted an opportunity to object to the minutes.

00:05:53 In response to a question from Commissioner Tomes, Mr. Carroll read the objection from the attorney representing the City of St. Matthews into the record.

00:08:44 Commissioner Butler discussed a typographical error (on page 5; should be "regression analysis".)

On a motion by Commissioner Proffitt, seconded by Commissioner Tomes, the following resolution was adopted:

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted at 6:00 p.m. on July 28, 2014 with correction as noted at today's meeting.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Jarboe, Kirchdorfer, Tomes, Butler, and Brown.

NO: No one.

NOT PRESENT: Commissioner White.

ABSTAINING: Commissioners Turner and Peterson.

August 7, 2014 – 1:00 p.m. Planning Commission Regular Meeting

On a motion by Commissioner Tomes, seconded by Commissioner Turner, the following resolution was adopted:

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on August 7, 2014.

The vote was as follows:

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Approval of Minutes

YES: Commissioners Blake, Brown, Tomes , Jarboe, Kirchdorfer, Peterson, and Turner.

NO: No one.

NOT PRESENT: Commissioner White.

ABSTAINING: Commissioners Proffitt and Butler.

August 11, 2014 – 1:00 p.m. Planning Commission Special Meeting

On a motion by Commissioner Proffitt, seconded by Commissioner Peterson, the following resolution was adopted:

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on August 11, 2014 with one correction: On page 10, the date of continuance reads September 14; it should read **September 4**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Butler, Peterson, and Kirchdorfer.

NO: No one.

NOT PRESENT: Commissioner White.

ABSTAINING: Commissioners Tomes and Turner.

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Business Session

Case No. 9-02-99

Request: Reconsideration of a Binding Element Violation
Final Order

Case Manager: John Carroll, County Attorney's Office

Agency Testimony:

00:12:54 John Carroll, legal counsel for the Planning Commission, presented the case (all documents on file.)

00:14:25 April Robbins, Code Enforcement Supervisor, said she had not been to the site but she did review about 30 pictures, taken this morning by a Code Enforcement officer, regarding specific issues on the site.

Deliberation:

00:16:00 Commissioners' deliberation. In response to a question from Commissioner Proffitt, Mr. Carroll said that no notice was required to schedule this case for hearing.

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.

On a motion by Commissioner Peterson, seconded by Commissioner Proffitt, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby schedule this case for reconsideration, to be heard at the October 2, 2014 Planning Commission public hearing.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Butler, Peterson, Kirchdorfer, Tomes, and Turner.

NO: No one.

NOT PRESENT: Commissioner White.

ABSTAINING: No one.

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Public Hearing

Case No. 14ZONE1017

NOTE: This case has been withdrawn

Project Name: Old Hickory Inn
Location: 1036/1038 Lydia Street
Owner: 1038 Lydia LLC
Applicant: 1038 Lydia LLC
Representative: Dunaway Engineering Inc.
Jurisdiction: Louisville Metro
Council District: 10 – Jim King
Case Manager: **Julia Williams, AICP, Planner II**

Request:

Change in zoning from R-5 to C-2 with a Chapter 10 waiver

Agency Testimony:

00:19:11 Julia Williams said the applicants have decided not to go forward with the request.

The following spoke in favor of the proposal:

No one spoke.

The following spoke in opposition to the proposal:

No one spoke.

The following spoke neither for nor against the proposal:

No one spoke.

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NO VOTE WAS TAKEN ON THIS CASE.

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Public Hearing

Case No. 14MINORPLAT1009

Project Name: Lake Forest – Tract A
Location: Golf Course between 2123 and 2207 Highland Springs Place

Owner: Lake Forest Country Club, Inc.
14000 Landmark Drive
Louisville, KY 40245

Applicant: James C. Florence
Land Design & Development
503 Washburn Avenue Suite 101
Louisville, KY 40222

Representative: William Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000 N. Hurstbourne Parkway Second Floor
Louisville, KY 40223

Jurisdiction: Louisville Metro
Council District: 19 – Jerry Miller

Case Manager: **Matthew R. Doyle, Planner I**

Request:
Minor Plat

Agency Testimony:
00:20:40 Matthew Doyle presented the case and showed a Power Point presentation.

The following spoke in favor of the proposal:

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 N. Hurstbourne Parkway Second Floor, Louisville, KY 40223

David Winkler, Land Design & Development, 503 Washburn Avenue Suite 101, Louisville, KY 40222

Phillip Gregory, 15400 Crystal Springs Way, Louisville, KY 40245

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Case No. 14MINORPLAT1009

Summary of testimony of those in favor:

00:26:54 William Bardenwerper, the applicant's representative, presented the case and showed a Power Point presentation [on file.]

00:29:05 Mr. Bardenwerper said there had been some questions about the size of the houses and discussed research from the PVA about that; also, how the proposed structures would fit on the lots.

The following spoke in opposition to the proposal:

No one spoke.

The following spoke neither for nor against the proposal:

No one spoke.

Rebuttal:

No rebuttal

Deliberation

00:31:43 Commissioner's deliberation. Commissioner Proffitt noted, for the record, that there was one letter of opposition in the staff report. All other Commissioners had no negative comments and felt the proposal is appropriate.

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.

On a motion by Commissioner Brown, seconded by Commissioner Proffitt, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the proposed Minor Plat for Lake Forest Tract A.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Butler, Peterson, Kirchdorfer, Tomes, and Turner.

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NO: No one.

NOT PRESENT: Commissioner White.

ABSTAINING: No one.

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Public Hearing

Case No. 14ZONE1011

***NOTE: This case was heard out of order.**

Project Name: Derby LLC Auto
Location: 5010 Poplar Level Road

Owner: Derby LLC

Applicant: Derby LLC

Representative: John Miller, Miller Wihry

Jurisdiction: Louisville Metro
Council District: 2 – Barbara Shanklin

Case Manager: **Christopher Brown, Planner II**

Request:

Change in zoning from C-1 to C-2; Variance to encroach into required non-residential to residential setback; Landscape Waivers; and a Detailed District Development Plan.

Agency Testimony:

00:19:45 Christopher Brown explained that this case has been requested to be continued to the September 4, 2014 Planning Commission public hearing.

The following spoke in favor of the proposal:

No one spoke.

The following spoke in opposition to the proposal:

No one spoke.

The following spoke neither for nor against the proposal:

No one spoke.

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.

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Case No. 14ZONE1011

On a motion by Commissioner Proffitt, seconded by Commissioner Butler, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **September 4, 2014** Planning Commission public hearing.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Butler, Peterson, Kirchdorfer, Tomes, and Turner.

NO: No one.

NOT PRESENT: Commissioner White.

ABSTAINING: No one.

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Public Hearing

Case No. 14PARK1002

Project Name: Rosewood Condominium
Location: 1505 Rosewood Avenue

Owner/Applicant: Highlands Restoration Group, LLC
Gene Crawford
11915 Creel Lodge Drive
Louisville, KY 40223

Representative: William Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway
Louisville, KY 40223

Engineer/Designer: Mark Madison
Milestone Design Group, Inc.
108 Daventry Lane
Louisville, KY 40223

Jurisdiction: Louisville Metro
Council District: 8 – Tom Owen

Case Manager: **Joseph Reverman, AICP, Planning
Supervisor**

Request:

Parking Waiver to use on-street parking spaces that are not directly adjacent or abutting the site, and to reduce the minimum number of parking spaces required on the site from 18 spaces to 16 spaces, a waiver of 2 spaces (an 11.1% waiver).

00:35:48 Before the Agency testimony, Commissioner Blake said there had been a request for extra time for presentations. Stephen Porter and William Bardenwerper, attorneys, discussed the need for more time to present testimony. After some discussion, the Commissioners declined to grant more presentation time.

Agency Testimony:

00:41:02 Joseph Reverman presented the case, gave a history of the project and the opposition to it, and showed a Power Point presentation (on file.)

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00:52:22 Mr. Reverman reviewed the applicant's parking study. He said the staff report shows that staff does support the parking waiver based on the merits of the parking study; however, he said that the citizen letters show that there is much opposition to the parking waiver and that there is clearly concern that there is a lack of on-street parking spaces, regardless of what the parking study shows.

00:53:39 Commissioner Brown asked if there are any public transit parking reduction credits applicable to this project. Mr. Reverman said there are not, and answered questions from other Commissioners regarding number of units and current parking issues.

00:55:29 Mr. Porter cross-examined staff.

The following spoke in favor of the proposal:

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

Mark Madison, Milestone Design Group, Inc., 108 Daventry Lane, Louisville, KY 40223

Thomas Hurst, 471 West Main Street Suite 400, Louisville, KY 40202

Summary of testimony of those in favor:

01:01:35 William Bardenwerper, the applicant's representative, presented the case and showed a Power Point presentation (on file).

01:08:42 Mr. Bardenwerper discussed a previous proposal to build an underground garage for the units, and neighbors' opposition to that. This is why the applicant has decided to use on-street parking.

01:10:00 Mark Madison discussed the traffic/parking study.

01:21:43 Ownership of the parcel of property was discussed. Mr. Bardenwerper talked about the developer's right to develop the rest of their property. Stephen Porter cross-examined Mr. Bardenwerper.

The following spoke in opposition to the proposal:

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Stephen Porter, 2406 Tucker Station Road, Louisville, KY 40299 (representative of opposition)

Paula Wahl, Neel-Schaffer, 200 Whittington Parkway Suite 205, Louisville, KY 40222 (expert witness for Rosewood Council)

Michael Kuharich, 1505 Rosewood Avenue Apt. 6, Louisville, KY 40204

Daniel Fauxpoint, 1505 Rosewood Avenue Apt #7, Louisville, KY 40204

Patrick Welsh, 1506 Rosewood Avenue, Louisville, KY 40204

Jeff Dereamer, 1435 Rosewood Avenue, Louisville, KY 40204

Morris Shay, 1506 Goddard avenue, Louisville, KY 40204

Harry Dennery (sp), 1505 Rosewood Avenue Apt #2, Louisville, KY 40204

John Sheryak, 1505 Rosewood Avenue Unit #3, Louisville, KY 40204

Dr. Robert Mann, 1505 Rosewood Avenue Apt #4, Louisville, KY 40204

C.J. Presma (sp), 1405 Rosewood Avenue, Louisville, KY 40204

Tanya Begole, 1438 Rosewood Avenue, Louisville, KY 40204

Suzi Zimmerer, 1525 Rosewood Avenue, Louisville, KY 40204

Jeanette Westbrook, 1827 Edenside Avenue, Louisville, KY 40204

Paula Catt, 1509 Rosewood Avenue, Louisville, KY 40204

Nancy Currier, 1442 Rosewood Avenue, Louisville, KY 40204

Aaron Thompson, 1509 Rosewood Avenue, Louisville, KY 40204

Denis Hammrich, 77 Valley Road, Louisville, KY 40204

Ricky Priest, 1505 Rosewood Avenue #3, Louisville, KY 40204

Keith Kleespies, 1525 Rosewood Avenue, Louisville, KY 40204

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Summary of testimony of those in opposition:

01:29:06 Stephen Porter presented the case on behalf of those in opposition, including a discussion about who actually owns the subject parcel. He said the condominium council is the owner of the subject property and is therefore only group legally able to sign a waiver request, NOT HRG.

01:45:51 Patrick Welsh discussed density and safety issues, notably, that there are no sidewalks on this steep hill.

01:49:09 Jeff Dereamer said the addition of 6 or 7 cars there will push the parking for condominium residents down the hill. The sidewalk ends at this site, therefore anyone who parks down the hill will not have a sidewalk to use.

01:51:36 Morris Shaw said he agreed with other residents about parking issues, and said there is no place to park in or off of the alley. He said service/utility vehicles frequently use his parking pad/area to service residents at Rosewood.

01:56:17 Harry Dennery said he agreed with the previous speakers.

01:56:26 John Sheryak said he agreed with previous speakers, and added that all developers are subject to the Code.

01:57:25 Dr. Robert Mann said he already has difficulty finding a place to park in the evenings. The lighting is poor, and the sidewalk ends in a bad spot.

01:58:37 C.J. Presma said drivers come off of Castlewood and "speed up" to get to Baxter Avenue.

02:00:36 Tanya Begole said she felt the parking study is flawed.

02:01:33 Suzi Zimmerer said she agreed with previous speakers.

02:02:07 Jeanette Westbrook spoke on behalf of the Tyler Park Neighborhood Association in opposition to the parking waiver.

02:04:38 Paula Catt said she agreed with previous speakers.

02:05:00 Nancy Currier said she agreed with previous speakers, and noted that her garage is one of the ones which cannot fit a modern car.

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02:05:37 Aaron Thompson said his garage was built in 1908 and is not big enough for his truck. He also has to park on the street.

02:06:15 Denis Hammrich was called but was not present to speak.

02:06:32 Ricky Priest also said he could not fit his vehicle into his small garage.

02:07:03 Paula Wahl, a traffic engineer, said she was contacted by Mr. Porter to examine the traffic study. She discussed her opinion and findings.

02:12:05 Keith Kleespies discussed his experiences, and said he has fallen on the hill during icy weather.

02:13:57 Commissioner Jarboe asked Mr. Porter about his assertion that HRG is not the owner of the property. Mr. Porter explained this in detail and cited page 14 of the Master Deed which he said supports his assertion that the condominium association is in control, not HRG.

02:22:23 Jonathan Baker, legal counsel for the Planning Commission, advised that the Planning Commission could still make a decision today. Mr. Porter made his closing arguments.

The following spoke neither for nor against the proposal:

No one spoke.

02:24:35 The Commission took a five-minute recess before rebuttal was heard.

***NOTE: Commissioner Proffitt left the meeting at approximately 3:45 p.m. and did not vote on this case.**

Rebuttal:

02:25:10 Mr. Bardenwerper defended his interpretation of condominium law. He discussed who owns the land; the fact that the applicant has been paying taxes on the land as though 3 units were already built; parking on the street; the parking study; and how the applicant has worked with the requirements from Metro Public Works.

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02:28:00 Mr. Bardenwerper referred to Items under Tab 6 of the applicant's booklet.

02:29:52 Gene Crawford - Managing member of Highlands Restoration Group, described some of the history of this project and said he has always tried to work with the neighbors, particularly in regards to the garage/parking issue. He said the neighbors just do not want the building to be built, and said he has paid taxes on this property since 2007 as if the three units were already built on it [per PVA; see applicant's booklet.]

02:33:39 Mr. Bardenwerper discussed the provision related to parking credits for on-street parking.

02:37:27 Mr. Bardenwerper corrected a typographical error in the parking study (behind Tab 7, bottom of chart – should say 6:00 a.m., not p.m.)

02:41:29 Mr. Porter cross-examined Mr. Bardenwerper.

Deliberation

02:54:07 Commissioner's deliberation. Includes discussion about adding sidewalk to Rosewood as a Condition of Approval.

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.

On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that Guideline 7 Policy 10 states that parking requirements should take into account the density and relative proximity of residences to businesses in the market area, the availability and use of alternative modes of transportation, and the character and pattern of the form district. Additional considerations including hours of operation and opportunities for shared parking may be factored on a site by site basis. On-site parking standards should reflect the availability of on-street and public

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parking. Parking standards should include the minimum and maximum number of spaces required based on the land use and pattern of development in the area. The subject site is located in an urban neighborhood that has good availability of alternative modes of transportation. The parking study conducted by the applicant indicates an availability of additional on-street parking spaces to accommodate the demand created by the proposed 3 dwelling unit structure. For these reasons, the parking waiver is in compliance with the Comprehensive Plan; and

WHEREAS, the Commission further finds that the applicant has provided spaces on the rear of the site in garage spaces. The original structure proposed in this location proposed 4 parking spaces in a basement level with access from Rosewood Ave. A waiver was approved by the Board of Zoning Adjustment to allow the vehicular access from Rosewood Ave. Vehicular access is discouraged from the front of a site in the Traditional Neighborhood Form District when access is provided, or able to be provided from a rear alley. The site currently has access from a rear alley with garage parking spaces. The applicant has chosen to eliminate the vehicular access from Rosewood Ave, which eliminates the 4 parking spaces in the basement level that were previously proposed. However, elimination of the vehicular access allow 2 additional on-street parking spaces to be provided, resulting in a 2 parking space deficiency. For these reasons, the applicant has made a good faith effort to provide as many parking spaces as possible on the site; and

WHEREAS, the Commission further finds that the parking study conducted by the applicant indicates that there are sufficient parking spaces on Rosewood Ave available at any given time during the day to accommodate the parking space demand created by the addition of 3 dwelling units on the subject site. For these reasons, and the reasons stated above, the requested parking waiver is the smallest possible reduction of parking spaces that would accommodate the proposed use; and

WHEREAS, the Commission further finds that the parking study conducted by the applicant indicates that there are sufficient parking spaces on Rosewood Ave available at any given time during the day to accommodate the parking space demand created by the addition of 3 dwelling units on the subject site. For these reasons, and the reasons stated above, adjacent or nearby properties will not be adversely affected; and

WHEREAS, the Commission further finds that the requirements found in Table 9.1.2 do not accurately depict the parking needs of the proposed use and the

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requested reduction will accommodate the parking demand to be generated by the proposed use. Because the parking study conducted by the applicant indicates that there are sufficient parking spaces on Rosewood Ave available at any given time during the day to accommodate the parking space demand created by the addition of 3 dwelling units on the subject site, the requirements found in table 9.1.2 of the Land Development Code, which mandate the number of parking spaces required to be provided off-street, do not accurately depict the parking needs of the proposed use, and the requested reduction will accommodate the parking demand to be generated by the proposed use; and

WHEREAS, the Commission further finds that the parking study conducted by the applicant indicates that there are sufficient parking spaces on Rosewood Ave available at any given time during the day to accommodate the parking space demand created by the addition of 3 dwelling units on the subject site; and

WHEREAS, a parking study was conducted in accordance with the requirements of the LDC and Metro Public Works and was entered into the record at the Planning Commission Public Hearing; this parking waiver request complies with the applicable Comprehensive Plan Guideline 3, Policy 24 and Comprehensive Plan Guideline 7, Policy 10 recommendations with respect to provision for adequate parking; and

WHEREAS, the applicant has made every effort to provide parking on-site; and the original plan for a garage would cause building complications; and so the request appears to be the least impactful on the condominium community or neighborhood; and

WHEREAS, the requested waiver is the smallest possible reduction of parking spaces that would accommodate the proposed use; and this meets the minimum requirements for the entire parcel (the existing building and the proposed building); and

WHEREAS, adjacent or nearby properties will not be adversely affected because a parking study has been performed which has demonstrated that a significant surplus of on-street parking is available; and the use of demonstrated surplus on-street parking will not adversely affect nearby properties; and

WHEREAS, the requirements stated in Table 9.1.2 accurately reflect the parking needs of the proposed use; and while the requested parking waiver is to reduce the required number of parking spaces, the parking study clearly demonstrates that there is adequate surplus parking to accommodate the two parking spaces

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needed so as to assure compliance with the aforesaid Table 9.1.2; and all of the “applicable reductions” listed in Table 9.1.1 are not applicable except for #6, which states “a parking waiver must be obtained to reduce the minimum number of required parking spaces, except as provided in Table 9.1.1”; and

WHEREAS, there is a surplus of on-street or public spaces in the area that can accommodate the generated parking demand; and the parking study submitted with this application demonstrates that a surplus of on-street parking available; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant’s justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Parking Waiver to use on-street parking spaces that are not directly adjacent or abutting the site, and to reduce the minimum number of parking spaces required on the site from 18 spaces to 16 spaces, a waiver of 2 spaces, an 11.1% reduction, **ON CONDITION** that the applicant provide up to 60 feet of sidewalk on the same side of Rosewood as the subject site, and that the sidewalk shall be ADA-compliant and shall provide an ADA-compliant terminus.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Peterson, Kirchdorfer, and Turner.

NO: Commissioners Tomes and Butler.

NOT PRESENT: Commissioners White and Proffitt.

ABSTAINING: No one.

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Legal Review Committee

No report given.

Planning Committee

No report given.

Policy and Procedures Committee


No report given

Site Inspection Committee

No report given.

ADJOURNMENT

The meeting adjourned at approximately 5:00 p.m.

live 

Chairman



Division Director