

**PLANNING COMMISSION MINUTES**  
**January 6, 2022**

**PUBLIC HEARING**  
**CASE NO. 21-ZONE-0034**

**Request:** Change-in-Zoning from OTF to C1, with Detailed District Development Plan and Binding Elements, and Variance  
**Project Name:** Jagers @ Indian Springs  
**Location:** 10700 Westport Road  
**Owner:** M&T LLC  
**Applicant:** M&T LLC  
**Representative:** Bardenwerper, Talbott & Roberts  
**Jurisdiction:** Louisville Metro  
**Council District:** 17 – Markus Winkler  
**Case Manager:** **Dante St. Germain, AICP, Planner II**

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:**

00:06:20 Dante St. Germain 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:**

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

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

Diane Zimmerman, 12803 Pine Meadows Pike, Prospect, KY 40059

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Russell Arbuckle, 14207 Willow Grove Circle, Louisville, KY 40245

**Summary of testimony of those in favor:**

00:15:44 Bill Bardenwerper, the applicant's representative, presented the applicant's case and showed a PowerPoint presentation (see recording for detailed presentation.)

In response to Commissioner Mims' question about landscape screening for the back of the building, Bill Bardenwerper responded that the overall site plan and enhanced landscaping along the access road is satisfactory to the neighborhood.

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In response to Commissioner Seitz's question, Mike Hill explained where the dumpster area is and said it will be screened and gated.

In response to Commissioner Carlson's question about the traffic study, Diane Zimmerman explained what an increase within acceptable limits is.

In response to Commissioner Carlson's about the drive-thru space, Mike Hill explained how Jagers designed the drive-thru and that it has sufficient space to avoid conflicting with traffic.

00:43:32 Steve Porter explained that he represents the Indian Springs Community Association and they have negotiated with the developers and appreciate their compromise. Mr. Porter also explained the 4000 degrees Kelvin restriction in the Binding Elements. The association supports the project with the Binding Elements agreed upon.

Commissioner Carlson asked about removing the language in Binding Element #11 that states, "and will be warm white with a tinge of yellow." Steve Porter and Bill Bardenwerper agreed that they could remove that language.

There was discussion about adding language to Binding Element #12 to clarify, "No lighted attached signage shall be placed more than 25' above ground, measured from grade to the top of the sign."

Commissioner Brown asked if the list of uses that would be prohibited on this property align with what is stated in the Land Development Code. Dante St. Germain explained there are a lot of uses that are not allowed in C-1 that are listed, but staff had no objections to the list. Steve Porter said the same list was in the Deed of Restrictions that is being filed.

**Rebuttal**

00:58:33 Bill Bardenwerper explained he was happy to work out a compromise with Steve Porter and Indian Springs Community Association. Mr. Bardenwerper also explained that Jagers is a new business entity of Texas Roadhouse.

00:59:40 **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.**

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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:

**Change in Zoning:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the proposal would not constitute a non-residential expansion into a residential area. The site is already OTF and located in an existing activity center; and the site is located on Westport Road, a minor arterial at this location, and in proximity to a transit route and major activity center across Westport Road; and the proposal would not permit hazardous uses. Uses with air, noise and light would need to comply with LMCO and LDC restrictions; and the proposed zoning district would not permit uses which produce noxious odors, particulates and emissions; and access to the site is via Indian Lake Drive from Westport Road; and noise from uses permitted by the proposed zoning district would be unlikely to impact existing communities, as the multi-family development to the south has its recreational facilities closest to the site, and the site is otherwise surrounded by commercial development; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the site is located in an existing activity center; and the site has appropriate access and connectivity. It would share an access point with the adjacent hotel; and the site is located in an existing activity center; and the proposed zoning district would permit a compact development pattern by permitting utilization of an underutilized parking lot; and the site is located in an existing activity center. The proposed zoning district would permit a mixture of compatible land uses; and the proposed zoning district would permit residential and office uses above retail or other mixed-use multi-story retail buildings; and the proposed zoning district would permit new development providing commercial uses; and the proposal would permit new commercial development in an outlot of a currently-underutilized parking lot of existing development; and the site is located in an existing activity center. The proposed zoning district would permit neighborhood-serving uses which are of an appropriate design and scale in the existing center; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because no flood-prone areas are evident on the site. No karst features are evident on the site; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because no historic assets are evident on the site; and no distinctive cultural features are evident on the site; and

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**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the site is located in an existing activity center; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because no access is proposed through development of significantly lower intensity or density. Access to the site is via Indian Lake Drive from Westport Road; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the proposed zoning district would permit a mix of neighborhood serving businesses and services in an activity center; and the site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities. The proposed zoning district would permit employment near housing; and Transportation Planning has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because the relevant utilities have approved the proposal; and Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Economic Development because the site has adequate access and connectivity to Westport Road, a minor arterial at this location, and I-265; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because no karst features are evident on the site; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposal would support aging in place by permitting neighborhood-serving commercial uses in proximity to established neighborhoods; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and the surrounding area; and the proposal would permit neighborhood-serving amenities providing goods and services to established neighborhoods; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because no existing residents will be displaced by the proposal; and the proposal would permit innovative methods of housing.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that Louisville Metro Council **APPROVE** the change in zoning in case 21-ZONE-0034 from OTF, office tourist facility, to C-1, commercial for the property at 10700 Westport Road.

**The vote was as follows:**

**YES: Commissioners Mims, Brown, Clare, Howard, Carlson, Daniels, Seitz, Sistrunk, and Lewis.**

**NO: No one.**

**PRESENT: Commissioner Price.**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

**21-VARIANCE-0044:**

**WHEREAS**, the Louisville Metro Planning Commission finds the requested variance will not adversely affect the public health, safety or welfare as the excess setback will not have a public health or safety impact; and

**WHEREAS**, the Commission further finds the requested variance will not alter the essential character of the general vicinity as the existing hotel already exceeds the 80' maximum setback; and

**WHEREAS**, the Commission further finds the requested variance will not cause a hazard or nuisance to the public as the excess setback will not impact sight lines, and the building will be constructed to building code; and

**WHEREAS**, the Commission further finds the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed setback is similar to the hotel setback; and

**WHEREAS**, the Commission further finds the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot and the proposed development do not exist yet and the site could be designed differently; and

**WHEREAS**, the Commission further finds the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the site could be redesigned without the excess setback; and

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**WHEREAS**, the Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the variance from Table 5.3.2 to exceed the maximum allowed setback of 80 feet along the Westport Road frontage to 85', variance of 5', for the property described in the staff report, based on the staff's analysis and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Mims, Brown, Clare, Howard, Carlson, Daniels, Seitz, Sistrunk, and Lewis.**

**NO: No one.**

**PRESENT: Commissioner Price.**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

**Revised Detailed District Development Plan:**

**WHEREAS**, the Louisville Metro Planning Commission finds that no natural resources are evident on the site. The site is currently used as a parking lot. Tree canopy will be provided; and

**WHEREAS**, the Commission further finds 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 no open space requirements are pertinent to the request; and

**WHEREAS**, the Commission further finds 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 the overall site design is compatible with existing and projected future development of the area. The site will be developed at an appropriate intensity and scale for the form district and the area; and

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**WHEREAS**, the Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code, with the exception of the requested variance, and conforms with the Comprehensive Plan.

**Proposed 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:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - d. 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; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - e. The materials and design shall be substantially the same as depicted in the rendering as presented at the January 6, 2022 Planning Commission

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meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.

- f. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the Jagers site and the Aloft site and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
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. 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.
7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. The following uses are prohibited: Bingo parlor; adult entertainment; drug paraphernalia; gas stations; convenience store; tattoo parlor; dry cleaning plant; automobile, truck, trailer, boat, or recreational vehicle sales, leasing, or display; auto repair including body shop or parts sales; video arcade; billiard hall; night club; dance hall; pawn shop; car wash; "Dollar" store; grocery store; laundries or laundrettes; package liquor store; smoke, vape or tobacco shop; tanning salon; variety store; pet store; or gun shop.
9. Operating hours of any use shall be limited to 6:00 a.m. to 10:00 p.m.
10. All exterior street lights and parking lot lights shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground. Building lighting shall also be pointed directly to the ground and signage lighting shall be customary as restricted by local authorities.



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11. The LED lighting on the building and in the parking lot shall not exceed a correlated color temperature (CCT) of 4000 degrees Kelvin.
12. No lighted attached signage shall be placed more than 25' above ground, measured from grade to the top of the sign.
13. Except for the menu board, no changing image or moving signs shall be permitted.
14. All freestanding monument signage shall not exceed seven feet in height, measured from grade, or as limited by the Land Development Code, whichever is less.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan for case 21-ZONE-0034 along with the Binding Elements on pages 16 and 17 of the staff report including the proposed Binding Elements presented today, based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Mims, Brown, Clare, Howard, Carlson, Daniels, Seitz, Sistrunk and Lewis.**

**NO: No one.**

**PRESENT: Commissioner Price.**