

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION MEETING
June 7, 2018**

A meeting of the Louisville Metro Planning Commission was held on May 24, 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
Jeff Brown
Rich Carlson
Lula Howard
Robert Peterson
David Tomes
Donald Robinson (sworn in today)

Commissioners absent:

Marilyn Lewis, Vice Chair
Emma Smith

Staff members present:

Emily Liu, Director, Planning & Design Services
Brian Davis, Planning & Design Manager
Jay Lockett, Planner I
Joel Dock, Planner II
Ross Allen, Planner I
Christopher French, Planning & Design Supervisor
Jeremy Shaw, Transportation Planning
Tony Kelly, MSD
Paul Whitty, Legal Counsel
John Carroll, Legal Counsel
Chris Cestaro, Management Assistant

The following matters were considered:

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Swearing-In of Commissioner Donald Robinson

00:02:48 Commissioner Donald Robinson was sworn in.

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APPROVAL OF MINUTES

May 24, 2018 Planning Commission Hearing Minutes

00:33:13 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on May 24, 2018.

The vote was as follows:

YES: Commissioners Brown, Howard, Carlson, Peterson, and Jarboe,

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioners Tomes and Robinson.

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PUBLIC HEARING

PDS Fee Schedule

Request: PDS Fee Schedule

Case Manager: Emily Liu, Director, Planning and Design Services

Agency Testimony:

02:36:59 Emily Liu handed out information to the Commissioners and presented the item (see recording for detailed presentation.) In response to a question from Commissioner Brown, Ms. Liu confirmed that this fee schedule was reviewed with stakeholders and was presented at the Policy & Procedures Committee meeting (which consists of citizens groups and members of the development community) before coming to the full Planning Commission today.

Deliberation

02:47:26 After some discussion, the Commissioners concur that the proposal is justified.

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.

PDS Fee Schedule

02:49:31 On a motion by Commissioner Howard, seconded by Commissioner Tomes, the following resolution, Standard of Review and Staff Analysis and testimony heard today, was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Planning and Design Services Fee Schedule as presented today, to take effect on July 1, 2018.

The vote was as follows:

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

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PUBLIC HEARING

CASE NO. 18DEVPLAN1041

Request: Relief from LDC 2.6.1.A.1 to allow an M-3 use to be within a 200-foot setback from a residential use not zoned EZ-1 as associated with a Category 2B Development Plan.

Project Name: CGB Roller Mill

Location: 1047 South 15th Street

Owner: Nate Brunner – Consolidated Grain and Storage

Applicant: Mike Rubino – GPD Group

Representative: Mike Rubino – GPD Group

Jurisdiction: Louisville Metro

Council District: 6 – David James

Case Manager: Ross Allen, Planner I

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:

00:04:42 Ross Allen presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:13:07 In response to a question from Commissioner Brown, Mr. Allen explained landscaping and screening requirements for Category 2B in general, and for this development in particular. There will be no additional landscaping required for this development.

The following spoke in favor of the request:

Hayne Hazlehurst and Matt Nidlinger, 5130 Port Road, Jeffersonville, IN 47130

Summary of testimony of those in favor:

00:13:46 Matt Nidlinger, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:18:53 Hayne Hazelhurst, another applicant's representative, continued the explanation (see recording for detailed presentation.)

00:21:35 Commissioner Brown asked about a note on the plan which states that drainage will be "sheet flow onto public ROW". He asked if MSD had a comment about that and if the sheet flow crossed the sidewalk. Mr. Allen said MSD had granted preliminary approval. Mr. Nidlinger explained about the extension of a hedge that is currently there, which will prevent some water runoff.

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00:22:50 Commissioner Carlson asked if there will be increased rail traffic as a result of this project. Mr. Neidinger said no, and added that the elevator has been in operation since the 1890's. Hours of operation should be 7:00 a.m. through 4:00 p.m. In response to a question from Commissioner Carlson, Mr. Nidlinger discussed noise reduction/dampening/etc. He said it will not be any louder than the existing elevator. There will be silencers on the exterior fans; also, the milling operation will be indoors.

00:25:57 In response to a question from Commissioner Howard, Mr. Nidlinger said APCD will conduct a test after the mill is operational to ensure compliance.

00:26:55 Tony Kelly, representing MSD, addressed Commissioner Brown's questions about drainage (see recording for detailed discussion.)

The following spoke in favor opposition to the request:

No one spoke.

Deliberation

00:29:00 The Commissioners concluded that the proposal is justified.

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.

00:32:04 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 Category 2B Development Plan per LDC 2.6.1.A.1 to allow an M-3 use to be within the 200 foot setback from a residential use not zoned EZ-1, **ON CONDITION** that the existing landscape buffer is extended in front of the proposed facility

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

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PUBLIC HEARING

CASE NO. 18DEVPLAN1059

Request:	Revised District Development Plan with Waivers
Project Name:	Bridwell Car Wash
Location:	4856 Cane Run Road
Owner:	Hogan Holding 36, LLC
Applicant:	The Car Wash Company
Representative:	Sarah Beth Sammons - Land Design & Development
Jurisdiction:	Louisville Metro
Council District:	1 – Jessica Green

Case Manager: **Jay Luckett, 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:

00:34:49 Jay Luckett presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) He discussed a phone call received from a neighbor who expressed concerns about the potential for trash and loitering on the site.

00:39:34 In response to a question from Commissioner Peterson, Mr. Luckett discussed the requested sidewalk waiver in more detail.

The following spoke in favor of the request:

Keith Thompson, 1502 Cowdrey Park Lane, Louisville, KY 40245

Sarah Beth Sammons, 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in favor:

00:40:20 Sarah Beth Sammons, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) She reiterated that there will be a cross-access agreement for use of the access road.

00:44:16 In response to a question from Commissioner Brown, Ms. Sammons discussed the two-way drive (shown on the plan near the dumpster.) She said that road is incorrectly labeled, and is more like 24 feet wide. She also discussed the screening and required VUA / LBA by the vacuum area.

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00:45:29 In response to a question from Paul Whitty, legal counsel for the Planning Commission, Ms. Sammons said the proposed summer hours of operation are 7:30 a.m. to 8:00 p.m.; winter hours are 7:30 a.m. to 7:00 p.m.

00:45:48 Regarding the neighbor's concerns about trash and loitering, Ms. Sammons said there will be two employees daily on the site.

00:46:20 In response to a question from Commissioner Howard, Mr. Lockett said the incorrectly-labeled drive aisle on the plan will be corrected prior to construction approval.

The following spoke in opposition to the request:

No one spoke.

Deliberation:

00:47:00 Commissioner Carlson suggested a binding element be added regarding hours of operation. Ms. Sammons said the owner would be agreeable to adding a binding element stating that the business would close no later than 9:00 p.m. per the Louisville Metro Noise Ordinance. The Commissioners concluded that the request is justified.

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.

- **Waiver #1 - Waiver of Land Development Code section 10.2.4 to allow a vehicle use area to encroach into a 15' property perimeter landscape buffer area.**
- **(Waiver #2) Waiver of Land Development Code section 5.9.A.1.b.i to not provide sidewalk connection within 50 feet of an existing transit stop.**

00:49:49 On a motion by Commissioner Peterson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, the applicant's justification, and evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the requested waivers will not adversely affect adjacent property owners because the property was previously developed as commercial tracts for future development. A detention basin along with associated storm water structures, and an access road from Bridwell Drive onto the site was constructed in the location where the required property perimeter buffer would be for the proposed car wash tract. The proposed car wash development will provide a Vehicular Use Area Landscape buffer to the existing access road, which would provide the appropriate scale

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and buffer for the overall development and therefore the waiver would not adversely affect neighbors; and

WHEREAS, the Commission further finds that the waivers will not violate the Comprehensive Plan because the proposed waiver strengthens the proposed development's compatibility with the Comprehensive Plan in that the waiver will allow the developer to maintain the standard buffering for adjacent land uses when separated by roadways and will make this potential commercial center's scale and intensity more compatible with the surrounding neighborhood (Cornerstone 2020, C2.5 & C4.2). If the waiver is not approved the required screening between C-1 to OR-1 is an 8' screen which would create potential sight distance, vehicle and pedestrian safety issues; and

WHEREAS, the Commission further finds that extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because, due to the site being previously graded, storm water infrastructure including the detention basin installed, and the existing access drive being constructed; there is not adequate property to provide the required fifteen foot property perimeter landscape buffer area. Nor would the required 8' screening be practical at this location, it would cut off the remaining tracts off visually from Cane Run Road as well as cause a potential safety issue with both vehicles and pedestrians; and

WHEREAS, the Commission further finds that the applicant will provide a Vehicular Use Area landscape buffer between the proposed car wash and the existing access drive; adjacent to the northern property line with the tract zoned OR-1. If the required property perimeter landscape buffer was not waived the applicant could not provide the required buffer due to the existing detention basin and access drive; and

WHEREAS, the Commission further finds that the waiver will not adversely affect neighboring property owners, as the adjacent OR-1 site that triggers this requirement is part of the same general development area, and will utilize the same vehicle use area as access when that area is developed; and

WHEREAS, the Commissioners further finds that the waiver will not violate specific guidelines of Cornerstone 2020. 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

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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, any development on the OR-1 portion of the site will be compatible with this proposal, and will not be negatively impacted by this waiver; 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 vehicle use area in question is already constructed, and in use; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land, as the vehicle use area is already constructed, and moving it would significantly reconstructing an existing detention basin to the south of the existing drive; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver truly does not affect the adjacent property owners. It simply makes the connection from the proposed car wash to the existing TARC stop greater in distance due to the existing detention basin; and

WHEREAS, the Commission further finds that the waiver does not violate the Comprehensive Plan; a pedestrian connection to the existing TARC stop is still being made; and

WHEREAS, the Commission further finds that the waiver is the minimum necessary to give relief to the applicant. Due to the existing detention basin the sidewalk connection within 50 feet of the existing TARC stop; and

WHEREAS, the Commission further finds that the strict application of the regulations would create unnecessary hardship due to the location of the existing detention basin. The applicant would have to significantly alter the existing detention basin, which is currently in use; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners, as there will still be the required pedestrian connectivity throughout and around the site; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. Connectivity to the sidewalk network and the transit stop will still be provided, but will not be within the required 50 feet; and

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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 connectivity to the sidewalk is being provided as close to the transit stop as is practicable; 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 existing detention basin on site makes the connection within 50 feet of the transit stop practically impossible; 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 a vehicle use area to encroach into a 15' property perimeter landscape buffer area; and the requested Waiver of Land Development Code section 5.9.A.1.b.i to not provide sidewalk connection within 50 feet of an existing transit stop.

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

Revised District Development Plan and binding elements

00:51:10 On a motion by Commissioner Peterson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, and the plan submitted, 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. 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 has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have 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

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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, except where the waiver has been requested; 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, **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. If the proposed use changes, the applicant must come back to the Planning Commission and show their detailed plan for that use.
2. Signs shall be in accordance with Chapter 8, or as presented at the public hearing.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. 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. 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

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a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

6. If a building permit is not issued within one year 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.
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. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
10. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
11. Hours of operation shall be between 7:30 a.m. and 9:00 p.m.

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

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PUBLIC HEARING

CASE NO. 18ZONE1009

Request: Change in zoning from R-4 to R-5 Single Family Residential
Project Name: Schaffer Lane Subdivision
Location: 6707 Schaffer Lane
Owner: The Roberson Trust
Applicant: Ball Homes
Representative: John Talbott - Bardenwerper, Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel

Case Manager: Joel Dock, Planner II

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:52:14 Joel Dock 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:

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

Rocco Pigneri, Ball Homes, 13301 Magisterial Drive, Louisville, KY 40223

Kathy Linares, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40291

Summary of testimony of those in favor:

00:55:09 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) During the presentation, Mr. Talbott discussed an agreement made with an adjoining property owner, Mr. Shuler (sp), regarding a fence. He said the applicant has made a private agreement with Mr. Shuler to put up a privacy fence along his property line.

01:03:31 In response to a question from Commissioner Jarboe, Mr. Talbott said he did not think the applicant had planned to put up any fencing along the Tompkins Road (sp) side of the development.

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01:03:57 In response to a question from Commissioner Brown, Mr. Talbott said that a binding element regarding Mr. Shuler's fence is not needed because the applicant has made a contractual private agreement with Mr. Shuler to put up that fence. The fence will meet regulations regarding setback and height.

The following spoke in opposition to this request:

No one spoke.

Deliberation:

01:05:48 The Commissioners concurred that the request is justified.

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.

Rezoning

01:07:04 On a motion by Commissioner Howard, seconded by Commissioner Tomes, 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 subject property which is located in the Neighborhood Form District, is characterized by predominately residential uses from low to medium/high density and that blend compatibility into the existing landscape and neighborhood areas with the provision for open space and greenways setback; pedestrian and bicycle accommodations are being provided; this proposed R-5 subdivision is a relatively low density one which will result in only a very slight increase in lots compared to the R-4 zoning currently allowed; the applicant also could have chosen the "alternative development incentives (ADI) regulation" or "conservation subdivision regulation", or it could have applied for "PRD" rezoning, but those regulations either require affordable components not appropriate for this location or are inappropriate based on other particular requirements of each of those regulations; and furthermore, R-5 is available, well-known, understood and easy to apply at this site, and there are other residential developments in the area that are zoned R-5, R-5A, or comparable; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3 – Compatibility because the zone change and subdivision DDDP complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 21, 22, 23 and 25 of Guideline 3 because this low density residential subdivision adds to the desired mixture of housing types, sizes and styles while still being design-compatible in terms of scale and building

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materials; the proposed subdivision does not involve any known nuisances, such as odors, noises, lighting, aesthetics or traffic different than what already exists in the greater area; setbacks will include compatible side and rear yards, and the LDC tree canopy and landscape regulations will apply; sidewalks are being added throughout most of the development and buffers are also being provided; the design of the homes is high quality and will value the homes consistently with the surrounding residential areas; the detailed district development/preliminary subdivision plan (DDDP), PowerPoint and exhibit books presented at the Planning Commission Public Hearing further demonstrate the foregoing; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 4 and 5 – Open Space / Natural Areas and Scenic and Historic Resources. The zone change and subdivision DDDP comply with all applicable Intents and Policies 1, 2, 5, 6, and 7 of Guideline 4 and Policy 1 of Guideline 5 because this standard single-family subdivision includes protected perimeter open space at Shaffer Lane and also will protect some natural resources and features, notably trees buffering the site where possible to assure good transitions and buffers to neighboring properties; and the homeowners' association will maintain the open space area as shown on the DDDP; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6 – Marketplace. The zone change and subdivision DDDP complies with all of the applicable Intents and Policies 2, 5, and 11 of Guideline 6 because this land is surrounded by like-kind subdivisions which makes this site an infill single-family residential site, appropriate for the area the larger community, where new single-family housing is in greatest demand; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 7 and 8– Circulation and transportation facility design; GUIDELINE 9 - Bicycle, Pedestrian and Transit; and GUIDELINE 12 – AIR QUALITY. The zone change and subdivision DDDP complies with all of the applicable Intents and Policies 1, 2, 4, 6, 9, 11, 13, 14, 15, 16, and 18 of Guideline 7; Policies 3, 5, 6, 7, 8, 9, 10 and 11 of Guideline 8; Policies 1, 3 and 4 of Guideline 9; and Policies 1, 2, 4, 6 and 8 of Guideline 12 because this subdivision is situated on a secondary collector street (Shaffer Lane) where sewer, water and other utilities already exist, and where road capacity exists; further, this DDDP has received the preliminary stamp of approval by Metro Transportation Planning and Public Works personnel, prior to its docketing for Planning Commission review; all of which assures that the applicable Public Works' standards are complied with, including regulatory standards of the Land Development Code (LDC); and

WHEREAS, the zone change and subdivision DDDP assures that both points of access into the proposed subdivision are designed to operate safely and, because of the distribution between these two streets, to function at relatively low volumes, as neighborhood serving streets are expected to function; thus, negative internal traffic impacts are avoided with this proposed subdivision; and, as noted, design of the site, as shown on the DDDP accompanying this application assures that matters such as corner clearances, driveway access, median openings, cross connections, and the like are provided as required; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 10 and 11 – Stormwater and Water Quality. The zone change and subdivision DDDP complies

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with all applicable Intents and Policies 1, 3, 6, 7, 9, 10 and 11 of Guideline 10 and Policies 3 and 5 of Guideline 11 because MSD requires that post-development peak rates of storm water runoff do not exceed pre-development peak flows, which is accomplished through on-site detention; new impervious areas will not have a negative impact on existing storm water systems; also, the DDDP has received MSD's preliminary stamp of approval; and at time of construction, the proposed subdivision will include water quality measures addressing the new MSD water quality standards and any new construction will comply with MSD's soil erosion and sediment control standards; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13 – Landscape Character. The zone change and subdivision DDDP complies with the Intent and applicable Policies 1, 2, 4, 5 and 6 of Guideline 13 because the local LDC requiring tree canopies, certain kinds of interior and perimeter landscaping will be fully complied with, except as respects a parkway buffer setback encroachment on the proposed lot where the existing farm house exists today; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1: Community Form because the subject site is surrounded by lower density subdivisions and would create an inter-connected slightly higher density development; the gross density proposed is 4.28 du/ac and the net density is 5.18 du/ac which is considered to be low density residential and similar to the maximum density of the existing zoning district which is 4.84 du/ac. The requested district would allow for lot sizes to be a minimum of 6,000 sq. ft.; the proposed lots are for single-family residential use only and will comply with LDC 5.4.2; and Neighborhood streets are designed to invite human interaction and easy access as sidewalks are provided throughout; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2 – Centers because the proposed rezoning is for low-density (7.26 du/ac) single-family subdivision; The proposed density is higher than that of surrounding developments and utilizes the land area in a manner that compatible with adjacent R-4 districts, while also continuing the hierarchy of the street grid and infrastructure; the sharing of entrance and parking facilities to reduce curb cuts and surface parking is provided as the Subdivision will connect to an existing subdivision and provide future access to adjacent lands; utility easements to provide access for maintenance and to provide services in common for adjacent developments has been provided; Single-family lots will be served by a local road; and sidewalks are provided throughout the subdivision to allow for ease of access; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development. The proposed subdivision is for single-family residential use only; Residential development will occur in accordance with the residential site design standards of LDC 5.4.2.; while the density will be increased slightly by the proposed zoning change all lots will be restricted to single family use only. Buffer yards will be provided to larger tracts of single-family lands; the proposal will not create significant amounts of traffic as it is for single-family use and has appropriate connections to roadways and adjacent lands; lighting will not exceed what is necessary for single-family

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residential use and safety; the proposal includes a variety of housing types, including, but not limited to, single family detached, single family attached, multi-family, zero lot line, average lot, cluster and accessory residential structures, that reflect the form district pattern. The proposal introduces a smaller lot size pattern to surrounding low density residential subdivisions; the subject site is located along a collector level roadway; shopping and transit are available at Bardstown Road; smaller lot sizes are being proposed which aids in creating a variety of housing options to decrease the burdens of the cost of maintenance of land; surrounding uses are single family residential and compatible with the proposed development; setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards; and residential site design standards of LDC 5.4.2 are applicable; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because open space is not required in this form district for standard subdivisions, and tree canopy is being provided as required; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because the site does not appear to contain any sensitive natural features, nor does the site appear to have any historic or architectural features of significance; 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. Right-of-way will be dedicated and the site is within the SDC area; 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 from an adjacent subdivision to the collector roadway and a stub is provided to the East; and right-of-way dedication will be made; 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. A Stub is provided to the east; the proposed zoning district is similar in intensity to surrounding areas and access to the site would not create a nuisance; the development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site; and the collector roadway provides primary access, a connection to adjacent single-family is provided to the North and a stub is provided to the east; 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 and bicyclists as sidewalks will be provided throughout; and

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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 13: Landscape Character because natural corridors are hindered by surrounding development and the interstate. The subdivision does not decrease connection; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the precise location of utilities and service will be determined at the record plat stage in consultation with all utility providers; the Fern Creek fire department has expressed no concerns and 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; 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 R-5, Single-family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

Major Preliminary Subdivision/District Development Plan

01:08:21 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 tree canopy requirements will be met. An area of in the southwest corner of the site will be reserved for detention and tree canopy preservation; 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 as sidewalks and connections have been provided to existing networks; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development is being provided as an area of in the southwest corner of the site will be reserved for detention and tree canopy preservation; and

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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 comply with the three-tiered approach for development recommended by the Fern Creek Small Area Plan; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as demonstrated in *Attachment 3* of the staff report; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Major Preliminary Subdivision/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 further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
3. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
4. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
5. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.

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6. 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.
7. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
8. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
9. Trees will be preserved and/or provided on site and maintained thereafter 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 a landscape plan for approval by 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.
10. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
11. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the 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, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
12. 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

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\$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.

13. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
14. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

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Request: Change in zoning from R-4 to C-2, landscape waiver, variances for front setback, and a Detailed District Development Plan
Project Name: Bullitt Lane Restaurants
Location: 400 Bullitt Lane
Owner: Timothy L. & Robert S. Boden
Applicant: Timothy L. & Robert S. Boden
Applicant's Representative: John Addington - BTM Engineering, Inc.
Jurisdiction: Louisville Metro
Council District: 18 – Marilyn Parker

Case Manager: Joel Dock, 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:

01:09:54 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:13:08 In response to a question from Commissioner Brown, Mr. Dock discussed binding elements #7 and #8 regarding sidewalk construction (see recording for detailed discussion.) He added that the applicant may be able to provide more information.

01:15:19 Commissioner Howard asked for clarification about the location of the variance for the parking.

The following spoke in favor of this request:

John Addington, BTM Engineering, 3001 Taylor Springs Drive, Louisville, KY 40220

Summary of testimony of those in favor:

01:16:15 John Addington, the applicant's representative, presented the applicant's case and showed a Power Point presentation.

01:21:21 In response to a question from Commissioner Carlson, Mr. Addington said the goal is to have both buildings on the site have a coordinated architectural look.

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The following spoke in opposition to this request:

No one spoke.

Deliberation:

01:22:06 The Commissioners concurred that the request is justified.

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.

Rezoning

01:23:44 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the Cornerstone 2020 checklist, the applicants' 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 subject property lies within the Campus Form Area as identified by Core Graphic 1 of the Cornerstone 2020 Comprehensive Plan. In the graphic, the form is described as a master planned area(s) with a mix of uses, support services and a common square plaza. Guideline I.B.II discusses a mixture of uses being encouraged that may include residential or commercial that would primarily serve the people whom work or live on the Campus. The particular Campus form area along Bullitt Lane and Oxmoor Court encompasses the mix of land uses surrounding the Oxmoor Center Mall and the properties that back up to the Watterson Expressway and 1-64. There is an existing mixture of uses that range from office and residential to restaurants and retail. Cornerstone 2020 also discussed that the form should be compact and walkable, with multiple buildings, central gathering areas, extensive open space, internal shared parking, private walkways and roadways, and shared utilities and signage; and

WHEREAS, the Commission further finds that the proposal complies with Guideline 1, Community Form, since it adds to the mixture of nonresidential uses that serve the residents and individuals working within the offices of the existing Campus form district. The development will include the elements discussed within the form such as full pedestrian connectivity, a central gathering area shared between the two buildings, shared parking for the lot and a compact layout meeting the minimum parking needs. The proposal connects to the existing road system and network along Bullitt Lane; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers. The proposed rezoning complies with Guideline 2, Centers, as specifically stated in

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Policy A.1& 3 since it is located in a Campus center with new construction to provide a commercial use to the area that has sufficient population to support it. The site of the proposed development is along the commercial corridor of Bullitt Lane adjacent to the Watterson Expressway. There is a nearby multi-family residential complex and office which both have populations that would be served by the new commercial property. The development has a compact pattern focused around a central shared plaza/patio space that allows for easy access by bicycle, car and pedestrians. The sidewalk network throughout the development will encourage appropriate pedestrian activity and promote accessibility by alternative modes of transportations. These elements of the development are in accordance with Policies A.4, 5, 13, 15 & 16; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 3 – Compatibility of the Cornerstone 2020 Compressive Plan because the Campus Form District identifies its intent to allow a mixture of land uses as long as they are designed to be compatible with each other and any impacts are appropriately mitigated. The subject property is a proposed non-residential use along a corridor of other non-residential uses specifically adjacent to it. The buildings will be providing a variety of materials and architectural animating features which will serve as a point of compatibility with the campus area. All of these building elements will be in accordance with the Land Development Code. Appropriate setbacks and landscape buffer areas will be provided along the property boundaries adjacent to the roadway/expressway. The setbacks, buffers and screening will allow for appropriate transition from the proposed non-residential uses to the roadway network in accordance with Policy A.4, 21, 22 & 23. The single story height of the development is compatible with the scale of the existing properties located within the larger Campus Form District. Lighting will be compliant with the Land Development Code to mitigate any adverse impacts of lighting from the proposed development on nearby properties. All site signage will be compatible with the form district pattern; and

WHEREAS, the Commission further finds that the proposed rezoning and new development will be located within an existing activity center adjacent to the Oxmoor Mall property. It will have full accessibility to people with disabilities consistent with federal, state and local regulations. The parking areas for the development are not located adjacent to any residential uses the internal and perimeter landscaping will result in diminished impact of the parking, loading and delivery areas around the development. The parking is designed to be safe and allow multi-modal access to the site. For the aforementioned reasons, the proposed development complies with Guideline 3 of the Comprehensive Plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 4 & 5: Open Space, Natural Areas and Scenic & Historic Resources. Open space and an outdoor amenity area are being provided as part of the development to provide meet the needs of the community as a component of development. The open space design is compliant with the Land Development Code which follows from Policy A.4 to create open space design consistent with the pattern of development in the form district. The proposal integrates natural features as highlighted in Guideline 5, Policy A.I into the pattern of development by preserving the southern portion of the site within the local regulatory floodplain and any protect waterway buffers along this portion of the property. There are no identified hydric soils, severe, steep or unstable slopes

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that would create an impediment to the proposed rezoning and associated development. Accordingly, the proposed development meets Guidelines 4 & 5 of the Cornerstone 2020 Comprehensive Plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 7, 8 & 9: Circulation, Transportation Facility Design and Bicycle, Pedestrian & Transit. The rezoning is located along a local level road with the rear of the property against Watterson Expressway ROW. Bullitt Lane connects to another local level roadway at Oxmoor Lane which continues on to Shelbyville Road, a major arterial. The access points to the site are from Bullitt Lane near unimproved ROW at Bunsen Parkway. There are only two curb cuts to facilitate safe vehicular access to the site. The proposal will contribute its proportional share of roadway improvements with sidewalk improvements within the Bullitt Lane ROW. The external and internal sidewalk network promotes bicycle and pedestrian use around and throughout the development. Appropriate access and adequate parking will be provided to further promote safe vehicular access and support the proposed commercial uses. Bicycle amenities will be provided at front entrance to the development in accordance with the Land Development Code. Therefore, the proposed rezoning and development comply with Guidelines 7, 8 and 9 of the Cornerstone 2020 Comprehensive Plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 10 & 11: Flooding, Stormwater & Water Quality. The subject site is located with the southern portion of the property within the 100 year floodplain and local regulatory floodplain; therefore, the proposed development has been placed outside of the identified floodplain to mitigate any negative impacts. The site does not contain steep slopes, unstable or hydric soils. The proposed development is located on a site that will enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties. There will be no increase in velocity at point of discharge at property line and no increase in drainage run-off to the right of way. The storm water detention design will receive approval from MSD prior to construction. In addition, an Erosion Prevention and Sediment Control Plan utilizing best management practices will be implemented prior to construction. The project will meet all MS4 Water Quality Regulations established by MSD with proper use of green best management practices. For above mentioned reasons, the proposed rezoning and development comply with Guidelines 10 & 11 of the Cornerstone 2020 Comprehensive Plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality. As previously demonstrated, the proposal represents a compact and efficient land use pattern. It utilizes the existing roadway network within the Campus Form. The proposed development is a commercial use with proper circulation and connectivity that will promote multi-modal connectivity to and on the site with an effort to increase pedestrian use. These combined efforts will aid in reducing the air quality impacts of the development. The campus area serving use proposed on the subject property complies with Guideline 12 of the Cornerstone 2020 Comprehensive Plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character. The proposed rezoning and development complies with Guideline 13 of

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Cornerstone 2020 of the Comprehensive Plan by meeting the majority of all landscape requirements of the Land Development Code. Sufficient landscape buffers will be provided along the property perimeters adjacent to the roadway networks to ensure compatibility of the site. Tree preservation practices will be followed within the identified tree canopy credit area to the south of the proposed uses that incorporate the native plant communities of the property. The overall tree canopy requirement for the lot will be exceeded. Interior landscaping will be installed within the vehicular use area to break up the parking areas and enhance the overall aesthetics of the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guidelines 14 & 15: Infrastructure and Community Facilities. The proposal complies with Guidelines 14 & 15 of the Cornerstone 2020 Comprehensive Plan because the subject property will be served by existing utilities and infrastructure which have adequate carrying capacity to accommodate the proposed development. All necessary utilities are available to the site. Fire hydrants will be provided to comply with Kentucky Building Code requirements. The subject property is served by the Louisville Fire Protection District #4 and Louisville Metro Police Department; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1: Community Form because the zoning district and proposed use provide supportive services to the nearby regional center form district, office uses within the Campus form, and nearby residential uses; the proposal provides for continued connection to existing pedestrian infrastructure. Outdoor dining allows for amenity and gathering spaces; connection to the street network is provided; and no additional streets or connected to streets is needed; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because a new center is not being created. Rather the uses are being incorporated into an existing campus center of mixed uses; the proposal is not for retail purposes, but the specific use requested has sufficient permanent and future population, as well as consumer and employee traffic to support the use; the proposal is compact and appears to use only the land that is necessary to accommodate the needed infrastructure; while the use or zoning district does not create a new center, it incorporates appropriately within an existing center and continues the development of the center. Sidewalks and vehicular connection are provided to serve the use; the proposal is located in a mixed-use area of varying intensities; the proposal is relatively small compared to nearby regional center footprints; each individual parking lot has the ability to serve the other user as the restaurants are interconnected through pedestrian facilities; the proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements; and the proposal provides ease of access by all modes of transportation; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because the proposed design of the structures is consistent with development in the area; the proposal continues the non-residential progression of development along the frontage roadway; no adverse odor or emissions are typically associated with the proposed uses; traffic would not appear to be a major concern of this development as the regional Malls nearby present a much greater traffic concern and surrounding facilities provide supportive

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services for those in the area for interaction with the regional Mall; lighting will be in compliance with LDC 4.1.3; the use is not a higher intensity than surrounding uses as a restaurant is compatible and supportive to surrounding uses; the proposal provides appropriate transitions as surrounding uses are similar in intensity and landscaping is being provided; the proposed land use is compatible with the surrounding area; setbacks, lot dimensions and building heights are compatible with those of nearby development; parking loading and delivery areas are not adjacent to residential areas; landscaping is provided along roadways and within parking areas; no parking garages are proposed; and signage will be in compliance 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 provided in the form of outdoor dining space. Open space is not required for a development of this size; the site is in the Campus Form district; and minimum tree canopy standards will be met; 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 is sensitive to the natural features of the site as much of the land is contained in regulatory floodplain and persevered as TCCA; the applicant has agreed to work with historic resources staff persons to identify any artifacts that may be present on the site; and the proposal is sensitive to the natural features of the site as much of the land is contained in regulatory floodplain and persevered as TCCA; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the project is located in a Campus form district and is a non-industrial development; and Bullitt Lane is an interior roadway serving multiple non-residential establishments and having immediate access to an arterial roadway and interstate; 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 pedestrian connections and bicycle parking has been provided; facilities are compatible with adjacent developments connection to the roadway; no dedications to public ways are required; parking is sufficient to support the use; and parking lots serve each restaurant through pedestrian connections; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because parking lots serve each restaurant through pedestrian connections; access to the site is through similar and/or compatible development; and Bullitt Lane serves as a local access road for non-residential development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal promotes mass transit, bicycle and

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pedestrian use and provides amenities to support these modes of transportation as pedestrian connections and bicycle parking has been 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 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; 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; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change-in-Zoning from R-4, Single-Family Residential to C-2 , Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

Variance and Waiver

01:24:37 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, the applicant's justifications, and evidence and testimony heard today, were adopted:

(Variance) WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety and welfare because there will be a 15' landscape buffer area provided along Bullitt Lane and sidewalks for safe pedestrian access to the site; and

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WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because the variance will allow parking setbacks similar to the established developments in the area suburban form districts. The existing developments in the general vicinity have similar setbacks where parking is allowed within the 25' front setback while providing similar LBAs; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public because all LBA's and setbacks will match the established pattern of development in the Bullitt Lane, Oxmoor Court and Oxmoor Mall areas. Ample space will be provided for pedestrian and vehicular infrastructure and circulation; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because all required infrastructure and landscape buffers will be provided in compliance with zoning regulations and will be similar to established patterns of development in the vicinity. The applicant proposes to provide 15' of the required 25' setback between parking and ROW; and

WHEREAS, the Commission further finds that the shallow depth of the lot and location along the adjacent expressway ROW restricts the usable area to provide parking, sidewalks and outdoor patios associated with the proposed restaurant uses; and

WHEREAS, the Commission further finds that The strict application of the provisions of the regulation would prevent the applicant from providing sufficient parking and maneuvering that is required for the proposed restaurant uses. It would put parking below the minimum required and complicate maneuvering at both vehicular entrances; and

WHEREAS, the Commission further finds that the applicant is requesting this variance prior to any site disturbance or development; and

WHEREAS, the Commission further finds that the requested variance will not adversely affect public health safety or welfare as the request will not impeded the safe movement of vehicles or pedestrians; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as parking facilities in the area appear to vary in their setback to the roadway, many of which appear closer than the required setback; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as designated pedestrian crossings are provide across drive lanes and the variance does not impact sight lines; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as it has been demonstrated that the request will not impact public health, safety, or welfare; create a hazard or nuisance; and will not impact the character of the area; and

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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 setback requirement is applicable to all properties within the form and the lot does not present any significant development constraints; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as it has been demonstrated that the request will not impact public health, safety, or welfare; create a hazard or nuisance; and will not impact the character of the area; 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 the site has not been developed and relief is being sought; and

(Waiver) WHEREAS, the Commission further finds that the requested waiver will not adversely affect adjacent property owners since sufficient setback, buffering, screening and planting will be provided along the Bullitt Lane and 1-264 ROWs; and

WHEREAS, the Commission further finds that the requested waiver will not violate the Comprehensive Plan. Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the 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. The waiver will not violate the Comprehensive Plan since sufficient screening, planting and buffering will be provided on the site; and

WHEREAS, the Commission further finds that the extent of the requested waiver of the regulation is the minimum necessary to afford relief to the applicant since there are extensive utility easements along both the front and rear of the property where landscape buffering is required. The waiver will still allow for sufficient setback, buffering, screening and planting to be provided along the Bullitt Lane and 1-264 ROWs; 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 it would require placement of buffering outside of the existing utility easements. It would eliminate needed parking and vehicular maneuvering on the site; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the request is being made adjacent to the public right-of-way; and

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WHEREAS, the Commission further finds that the requested waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, Policy 9 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 to mitigate 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 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. 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 requested waiver will not violate these guidelines as the width and planting material will be provided as required; 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 width and planting material will be provided as required and utilities must be provided; 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 create an unnecessary hardship on the applicant as the width and planting material will be provided as required and utilities must be provided; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Variance** of LDC, section 5.3.5.C.3.a to allow off-street parking to encroach upon 10' front yard; and the requested **Waiver** of Land Development Code (LDC), section 10.2.B to allow LBA/Easement overlap in excess of 50%.

The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

Detailed District Development Plan and Binding Elements

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01:25:36 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:

WHEREAS, the Louisville Metro Planning Commission finds that much of the site contains regulatory floodplain which is being preserved as TCCA. The applicant has committed to working with historic preservation officials to located any potential historic artifacts on the property prior to construction; 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 as sidewalks and connections have been provided; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development is being provided as TCCA areas are being preserved in areas within the local regulatory floodplain; 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 as demonstrated in *Attachment 3* of the staff report; 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

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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. Construction Fencing shall also be provided along the Limits of Disturbance as shown on the approved district development plan.

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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways for any work within the state right-of-way.
 - 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 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 shall work with Urban Design/Historic Preservation Staff and the Kentucky heritage Council to determine if a qualified professional archaeologist is to be hired to examine the project area and make recommendations regarding the need for any additional investigations prior to site/ground disturbance.
7. Construction of sidewalks along the property frontage up to Bunsen Pkwy shall be triggered at such time that Bullitt Lane is extended to Bunsen Pkwy. The owner shall construct the sidewalk or pay a contribution in the amount equal to said construction as determined by the Director of Public Works.
8. The property owner is responsible for funding \$79,000 toward improvements to Bullitt Lane. The funding shall be provided to Metro Public Works when funding is approved for Bunsen Parkway within "The Park at Oxmoor", as recorded in Plat Book page 44, Page 5 in the office of the County Clerk's Office of Jefferson County. A signed contract/agreement, approved by the County Attorney's office, shall be provided to Metro Planning & Design Services and Metro Public Works.
9. The design and appearance of the proposed structures shall be substantially the same as depicted at the June 7, 2018 Planning Commission public hearing.

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The vote was as follows:

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

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

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CASE NO. 17ZONE1060

Request: Change in zoning from R-4 to C-2, landscape waiver, variance, and Detailed District Development Plan.
Project Name: Storage Project
Location: 7500 Bardstown Road
Owner: Madge H. Chalmers Revocable Trust & Edward Harding Jr.
Applicant: arc – Jason Sams
Representative: Cliff Ashburner – Dinsmore & Shohl
Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel

Case Manager: Joel Dock, 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:

01:27:25 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:34:22 Commissioner Carlson asked about a future center median or barrier wall. Mr. Dock said there is a future median proposed, and he discussed how this affected transportation and his conclusions in the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore & Shohl, 101 South Fifth Street Suite 2500, Louisville, KY 40202

Jason Sams, ARC, 1517 Fablicon Drive, Jeffersonville, IN 47130

Summary of testimony of those in favor:

01:35:24 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

01:40:09 Jason Sams, an applicant's representative, continued presenting the applicant's case and the Power Point presentation.

01:50:07 Mr. Ashburner concluded the presentation.

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01:54:21 In response to a question from Commissioner Tomes, Mr. Ashburner discussed the proposed barrier / traffic improvements, whether they were contemplated or finalized before the Fern Creek Small Area plan was completed, and how this could affect traffic patterns.

01:55:49 Commissioner Jarboe asked Mr. Ashburner if the right-in/right-out only traffic access could be an impediment to the retail uses. Mr. Ashburner said the access issue should not affect the storage users. Commissioner Jarboe and Mr. Ashburner discussed the access issues.

01:56:49 Commissioner Tomes and Mr. Ashburner discussed access to other parcels to the west.

01:58:02 Commissioner Howard asked Mr. Sams about the 20-foot-high light pole. Mr. Sams said the lighting does not have to be on a 20-foot pole. He said that, typically, most lighting for self-storage is attached to the building, and that the applicant's only concern is to provide enough lighting to safely light the property.

The following spoke in opposition to this request:

Jon Baker, Wyatt Tarrant & Combs, 500 West Jefferson Street Suite 2800, Louisville, KY 40202

Summary of testimony of those in opposition:

01:59:40 Jon Baker, attorney for the opposition (SouthPoint Partners, et. al) shared concerns of nearby property owners/business owners. Those concerns include: The proposal is not in line with the existing mixed-use retail Regional Center that has already been developed; the Councilman for this area has raised interest in making this area a parkway and raising the level of appearance/aesthetics here because this is the gateway to Fern Creek; this proposal does not meet the Comprehensive Plan standards; and the proposed use is not a good fit for where this area is going. Mr. Baker then showed a Power Point presentation (see recording for detailed presentation.)

02:06:11 Commissioner Tomes said that he did not think the area was going to be very "walkable" and that most businesses there are auto-centric. He asked Mr. Baker if there was some plan or suggestion from his client (Southpointe Commons) regarding improving the connections and/or intersection on the opposite side of the street (where Bartley is.)

Rebuttal

02:09:24 Mr. Ashburner resumed the podium for rebuttal (see recording for detailed presentation.)

02:16:22 Before the Commissioners' deliberation, Mr. Dock noted that there was an error in the staff report. He said that this is change in zoning to C-1 AND C-2. The retail outlot is C-1; the mini-storage is C-2. The boundaries are correctly shown on the development plan.

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Deliberation:

02:16:37 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.

02:32:20 On a motion by Commissioner Brown, seconded by Commissioner Carlson, based on Staff's Findings of Fact provided as *Attachment 4* in the Staff Report, and evidence and testimony heard today, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4, Single-Family Residential to C-1 & C-2 , Commercial on property described in the attached legal description be **DENIED**.

The vote was as follows:

YES: Commissioners Brown, Howard, and Carlson.

NO: Commissioners Peterson, Jarboe, and Tomes.

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

The motion recommending DENIAL failed due to lack of majority.

02:34:28 On a motion by Commissioner Tomes, seconded by Commissioner Peterson, based on the Applicant's Findings of Fact provided within *Tab 11* of the Applicant's public hearing booklet, and evidence and testimony heard today, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4, Single-Family Residential to C-1 & C-2 , Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Jarboe, and Tomes.

NO: Commissioners Brown, Howard, and Carlson.

NOT PRESENT: Commissioners Lewis and Smith.

ABSTAINING: Commissioner Robinson.

The motion recommending APPROVAL failed due to lack of majority.

This case will be sent to the Louisville Metro Council with NO RECOMMENDATION

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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 3:30 p.m.

Chairman

Division Director