

PLANNING COMMISSION MINUTES
December 2, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0121

Request: Change in zoning from R-1 to C-2, with Detailed District Development Plan with Binding Elements, and Waivers, CUP for animal racetrack, Approval of rate of change for changing image sign, and Variance

Project Name: Derby City Gaming Hotel Addition

Location: 4520 Poplar Level Road

Owner: Churchill Downs Inc.

Applicant: Churchill Downs Inc.

Representative: Bardenwerper Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 21 - Nicole George

Case Manager: Dante St. Germain, AICP, Planner II

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

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

Agency Testimony:

03:34:53 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) She noted that all of these requests are to allow an addition to an existing facility and to bring the existing facility into compliance with the Land Development Code.

03:46:31 In response to a question from Commissioner Seitz, Ms. St. Germain said the track is currently being used for training purposes.

03:47:17 In response to questions from Commissioner Brown, Ms. St. Germain discussed details about the changing image signage (see recording.)

03:48:57 In response to questions from Commissioner Sistrunk, Ms. St. Germain explained that the site is not in "violation" of the Land Development Code. It does have non-conforming rights/a special use permit (see recording for detailed discussion.)

03:50:16 In response to a question from Commissioner Daniels, Ms. St. Germain said the current proposal is to continue to use this facility for training purposes; no races

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run with the public in attendance. Commissioner Sistrunk asked if granting the CUP could open the door to that possibility in the future. Ms. St. Germain said the applicant has not indicated that they are interested in doing that. She described the process the applicant would have to go through to obtain another Modified Conditional Use Permit for that (see recording for detailed discussion.)

03:52:42 In response to a question from Commissioner Seitz, Ms. St. Germain said that gaming might be allowed in the hotel lobby but that the applicant should address this question.

The following spoke in support of the request:

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

Jihad Hallany, Vision Engineering, 128 E Reynolds Rd, Lexington, KY 40517

Ryan Jordan, Vice President of Operations at Churchill Downs, 600 North Hurstbourne Parkway Suite 400, Louisville, KY 40223

Summary of testimony of those in support:

03:53:25 Bill Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (See recording for detailed presentation.)

04:03:15 Jihad Hallany, an applicant's representative, explained the expansion of the retention pond and other existing neighborhood drainage issues that are being addressed (see recording.)

04:05:00 Mr. Bardenwerper resumed and concluded his presentation, including proposed binding elements.

04:18:43 In response to questions from Commissioner Mims, Mr. Bardenwerper confirmed that this is a 24-hour facility. Regarding traffic questions, Mr. Hallany discussed how the peak traffic hours were determined as well as the signal warrant analysis. Commissioner Brown noted that a proposed binding element states that no Certificate of Occupancy can be issued until the signal is installed (see recording for detailed discussion.)

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04:23:33 Commissioner Mims, Mr. Hallany, and Mr. Bardenwerper discussed the estimated amount of traffic that might go towards Preston Highway and Durrett Lane and how that could be handled.

04:25:25 Commissioner Mims and Mr. Bardenwerper discussed the waivers being requested for the changing image signs.

04:26:52 In response to questions from Commissioner Daniels, Ryan Jordan discussed plans for concerts and other music/entertainment, that will be indoors or otherwise contained. There are no plans for any outdoor entertainment or standalone concerts. The entertainment is designed for customers on the gaming floor and/or staying at the hotel.

04:28:28 In response to a question from Commissioner Clare, Mr. Bardenwerper said there is only one requested variance; the rest are waivers.

04:29:05 In response to questions from Commissioner Sistrunk, Mr. Bardenwerper and Joe Reverman, Assistant Director of Planning & Design Services, discussed the proposed binding element which references the traffic signal (see recording for detailed discussion.)

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

Rachel Roarx, representing Councilwoman Nicole George, 601 West Jefferson Street, Louisville, KY 40202

Summary of testimony of those neither for nor against:

04:34:41 Rachel Roarx, representing Councilwoman Nicole George, followed up with questions raised during the neighborhood meetings. She asked Mr. Hallany if he had followed up with MSD regarding connecting nearby neighbors who are on septic tanks with possibly becoming hooked up with Churchill Downs’ sanitary sewer connection. Mr. Hallany explained his contact with, and discussion with, MSD regarding this issue (see recording.)

04:39:20 Ms. Roarx also said neighbors were concerned about hotel customers using Breitenstein Avenue to exit; tractor trailer and/or horse trailers, speeding, other traffic patterns, etc. The possibility of speed bumps along Breitenstein Avenue were discussed. Mr. Jordan said there are no plans to install speed bumps at this time, mostly because horse trailers going over these humps can cause issues for the animals. Mr. Hallany discussed traffic control within the existing and new parking lots.

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04:43:30 Ms. Roarx, Mr. Hallany and Mr. Bardenwerper also discussed the Durrett Lane/Breitenstein traffic and how the traffic study referred to this area; level of traffic service if the signalized intersection is not created; drainage issues and mitigation; where the curb and gutters will be located and how this will affect water retention for Evergreen Cemetery as well as residents; and the proposed variance and the height of the building. See recording for detailed conversation.

04:58:11 In response to questions from Ms. Roarx, Mr. Bardenwerper and Mr. Hallany discussed the variance and what types of screening and buffering the residents and the cemetery will receive (see recording.)

The following spoke in opposition to the request:

No one spoke.

Deliberation:

05:04:51 Commissioners' deliberation.

05:09:59 Commissioner Howard pointed out that, if the Conditional Use permit is approved, then Item #4 A would have to be waived. Item #4 A states:

- A. Setbacks - All buildings, structures, facilities, or storage areas shall be at least 100 feet from any property lines.*

Commissioner Howard noted that existing barns and other horse-related structures are within 100 feet of the property line.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning

05:12:01 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, and the applicant's findings of fact, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Plan Element 4.1 – Community Form because, to Goal 1, Policies 2.1, 3.1.10, 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 23, it complies as follows, because the site is located in the Suburban Workplace Form District, which is a form characterized by predominately industrial and office uses where the buildings are supposedly set back from the street in a landscaped setting; this form district is supposed to contain a single large-scale use or a cluster of uses within a master planned development; the Derby City Gaming facility, both as it exists and as planned, fits within this characterization of this area, although not very many of the existing uses around it do, those being mostly older and constructed under the very different standards of the time in which they were built; and

WHEREAS, in order to provide adequate transportation access in Suburban Workplaces, connected roads, public transportation and pedestrian facilities are encouraged, and significant screening and buffering are often necessary to protect potentially negatively impacted abutting uses; and all of that already exists at the Derby City Gaming site, and the KTC approved traffic signal at the entrance to be installed with the facility addition will assure that that continues under the new plan; and

WHEREAS, given that the Derby City Gaming facility and racetrack already exist and operate at this site and that even more intense uses and zoning than this one also exist in the area as above- described, the proposed C-2 zoning will not constitute a non-residential expansion into a residential area; after all, the site is located along Poplar Level Road, a major arterial at this location, and is near existing industrial and commercial uses; furthermore, the Derby City Gaming building expansion with hotel is not an industrial zoning use; and air, noise and light emissions must comply with LMCO and LDC requirements; and

WHEREAS, located as the Derby City Gaming facility expansion and unexpanded racetrack are just a short drive in all directions from sizable and ever-growing population centers, travel distances for workers are reduced; Derby City Gaming and the racetrack are also easily accessible off I-264 (the Watterson Expressway) and a major north-south arterial roadway (Poplar Level Road), and as such is readily accessible to its customer base; and all of this helps contribute to improved air quality; and

WHEREAS, quality building components and a design compatible with the existing Derby City Gaming building, plus quality landscaping together with the already existing, effective fence screening and buffering also help assure context-appropriateness and design-compatibility for the larger area and proximate residential neighborhoods; and

WHEREAS, partly as a consequence of what surrounds this proposal and partly as a consequence of the fact that the racetrack is not expanding and that the Derby City

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Gaming facility is and will remain fully contained, except for its ample and highly organized parking, and will have an improved main access with the traffic signal (with a valuable secondary and emergency access) and excellent internal circulation, impacts such as traffic, odors, noise and aesthetic factors will not prove to be nuisance factors; and

WHEREAS, Land Development Code required size restrictions, interior and perimeter landscaping, minimum parking, maximum lighting, and required setbacks will be met, other than as set forth on the requested waivers and variance; and

WHEREAS, to Goal 2, Policies 1, 2, 5, 6, 7, 15, 16 and 17, it complies as follows, because as said, the proposed Derby City Gaming building addition will be located in a Suburban Workplace Form District and will adjoin already built workplace and commercial facilities of an even more intensive kind as this one; as such and with decent vehicular access along Poplar Level Road and to and from the nearby Watterson Expressway, there already exist convenient vehicular access to other commercial establishments as well as residential areas from which Derby City's workforce and customers arrive; indeed the proposed Derby City Gaming facility expansion is part of a large mixed use activity center; and it will also have easy access to Louisville's interstate highway system beyond that of just the Watterson Expressway leading to and from downtown, the airport and other population centers in Kentucky and Southern Indiana; and

WHEREAS, to Goal 3, Policies 8, 9 and 10, it complies as follows, because the proposed Derby City Gaming facility expansion and unexpanded racetrack do not impact natural features, wetlands, slopes or waterways; and

WHEREAS, to Goal 4, the applicant/developer submits that no historic structures exist on this site; and

WHEREAS, to Goal 5, the Derby City Gaming facility, both as it currently exists and as proposed for expansion, are highly designed to be aesthetically attractive in its own right; and

WHEREAS, the Commission further finds that the proposal meets Plan Element 4.2 – Mobility because, to Goal 1, Policies 1, 4 and 6; Goal 2, Policies 1, 2, 3, 4, 5, 6, 7, 8 and 9; and Goal 3, Policies 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 18, 20 and 21, it complies as follows, because this proposed Derby City Gaming facility expansion and existing unexpanded racetrack (located as they are within an existing and growing mixed use Suburban Workplace area proximate to other large commercial and industrial facilities, with good access off an arterial roadway and to and from the Watterson Expressway) is plainly part and parcel of a good road network; Churchill Downs will prepare

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construction plans that will continue to assure convenient and safe access with good site distances and turning radii, along with improved access through the traffic signal to be installed at the main entrance; and

WHEREAS, bike racks and handicapped parking spots will be installed as and where required near buildings; and all drive lanes and parking spaces will continue to be designed in accordance with Metro Public Works and Transportation Planning (MPW&TP) requirements; and these are preliminarily depicted on the DDDP filed with this application; and

WHEREAS, an updated Traffic Impact Study (TIS) was prepared and submitted to MPW&TP as part of this application, which demonstrates acceptable levels of service for the intersections designated for review; and

WHEREAS, TARC service is available along Poplar Level Road; and

WHEREAS, all necessary utilities are located proximate to this site and accessible by it via public right of way or easements; and

WHEREAS, the Commission further finds that this application Package complies with Plan Element 4.3, applicable Goal 2, Policies 1, 2 and 3 as follows, because fire-fighting, EMS and police services are provided by the City of Louisville; and sanitary sewer service via existing MSD facilities is also available; and

WHEREAS, the Commission further finds that the proposal meets Plan Element 4.4 – Economic Development because, as to Goal 1, Policies 1 and 3 and as to Goal 2, Policies 1, 3 and 4, it complies as follows, because as Louisville Metro's population continues to grow, so does demand for employment opportunities of all types; this proposed Derby City Gaming facility expansion is part of Churchill Downs' response to that demand and as such promises increased opportunities for employment initially in the building trades and ultimately in the gaming and horse training, care and racing business; and

WHEREAS, it also increases the Metro Louisville tax base essential to the provision of government services, especially important after the worst economic setback since the Great Depression which has resulted from the current COVID crisis; if Louisville and Kentucky are to fully economically rebound from this devastating occurrence, it will be because new employment growth opportunities are afforded like this one; and that is why this Plan Element of the Comp Plan takes on such overriding significance at this point in Louisville's history; and

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WHEREAS, the Commission further finds that the proposal meets Plan Element 4.5 – Livability because, to Goal 1, Policies 5, 7, 10, 11, 12, 13, 15, 16, 23, 26, 27, 28, 30, 31, 32, 33 and 35; and Goal 4, Policies 1 and 2, it complies because planned improvements to the storm water management plan will capture existing storm water that flows from a large watershed moving off- site to on-site, and that will be piped to the retention basin inside the oval track before it is released at a controlled rate of flow; these planned improvements will involve a significant increase in the size of the existing retention basin inside the track; because the Derby City Gaming facility expansion and hotel addition will be constructed where parking lot pavement exists today and because the slightly more than 300 additional parking spaces will be constructed where compacted gravel already exists, there will be no increase in site-located impervious surface; as a consequence, the storm water improvements being planned are not required, yet they will be made anyway, thus to certain extents improving neighboring property owners' drainage situations; and furthermore, MSD regulations mandate that post-development peak rates of storm water run-off cannot exceed pre-development rates; and

WHEREAS, this Application Package complies with Plan Element 4.6, its 3 Goals and their Objectives because while they don't specifically address developments of this kind, the proposed Derby City Gaming facility expansion and existing unexpanded racetrack nevertheless comply in that they will bring additional high-quality employment opportunities to Greater Louisville and this area so as to assure more good jobs proximate to where people live; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 1 because the proposed zoning district would not constitute a non-residential expansion into a residential area, as the site is located in the Suburban Workplace form and has been in non-residential nonconforming use for many years; the site is located along Poplar Level Road, a major arterial at this location, and is near existing industrial and commercial uses; the proposal is not for industrial zoning; the proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions must comply with LMCO and LDC requirements; the proposed zoning district would not permit uses creating noxious odors, particulates or emissions; traffic to the site is routed via Poplar Level Road, a major arterial at this location. The most affected property is likely to be Evergreen Cemetery; and the proposed zoning district would not permit uses which handle hazardous or flammable materials, or are similar to junkyards, landfills or quarries; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the site is located in the Suburban Workplace form and is a part of the commercial and industrial corridor at Poplar Level Road; the proposal would permit retail uses. The site is located in an existing activity center; the proposed zoning district would encourage a more compact pattern of development; the proposed zoning district

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would encourage a mixture of compatible land uses in an existing commercial corridor and activity center; the proposed zoning district would permit residential and office uses above retail and other mixed-use multi-story retail buildings; the proposal would permit new development providing commercial uses; and the proposed parking lot has been reviewed and it is not underutilized; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no natural features are evident on the site; no severe, steep or unstable slopes are evident on the site. Highly permeable soils are being avoided by development; the site is not located in the Ohio River Corridor; and the site is not located in a flood-prone area. No karst features are evident on the site; and

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

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the site is located in an activity center and an employment center; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the proposed zoning district would encourage a mixture of compatible land uses. The site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the proposed zoning district would encourage higher density mixed-use development in an existing activity and employment center; and Transportation Planning has approved the proposal; and

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

WHEREAS, the Commission further finds that the proposal meets Economic Development: Goal 1 because the site is located in a Workplace Form. The proposal would encourage compatible land uses which meet the needs of the industrial subdivision or workplace district and their employees; the proposal is not for industrial zoning; the proposed zoning district would permit commercial uses generating high volumes of traffic. The site is located on Poplar Level Road, a major arterial at this location; and the proposal is not for industrial zoning. The site is not located near the airport or the Ohio River; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because no karst features are evident on the site, and the site is not located in the floodplain; and

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WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would permit housing in an existing activity center, and would also support aging in place by permitting an existing activity center to expand adjacent to housing; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposal would permit mixed-income and mixed-use development that is connected to the neighborhood and surrounding area; and the proposed zoning district would permit housing in proximity to a multi-modal transportation corridor. It would also permit commercial and employment opportunities in an activity center near existing housing; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because no existing residents will be displaced by the proposal, and the proposed zoning district would permit innovative methods of housing; 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-1 Single Family Residential to C-2 Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

ABSENT: Commissioner Carlson.

Variance

05:12:57 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, and the applicant's findings of fact, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the variance will not adversely affect the public health, safety or welfare because the transition zone is due to the site's Suburban Workplace Form District being adjacent to the Neighborhood Form District southwest of the site; the transition zone height limitations are designed to

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protect the adjoining Neighborhood Form District from properties impact; in this case, the adjoining property is a cemetery, rather than a residential use; and with the hotel being located toward the front of the building, only approximately 1/3rd will be in the 200' transition zone necessitating a variance, the remainder will not require a variance; and

WHEREAS, the variance will not alter the essential character of the general vicinity because the site is largely an existing condition and existing use, with the addition of a hotel partially located in the transition zone; the new hotel building will face northeast internal to the site, limiting the impacts to the general vicinity; and the closest residence to the hotel addition is over 700 feet away, three times greater than the 200' transition zone; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because it is an aesthetic issue and not of a sufficient height to cause air travel concerns as confirmed by the applicant; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the adjoining use is a cemetery and the hotel has been located on the site as far away from the subject property line and transition zone as possible; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an existing condition operating under nonconforming rights and conditional/special use permits rights; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because it would require moving the hotel further toward the horse training track solely for the purpose of avoiding impacts to the cemetery property line; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because the existing condition of the property limited the areas that could be used for the hotel addition; and

WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare as the building will be constructed to code and the excess height will not have any adverse safety impacts; and

WHEREAS, the Commission further finds that the the requested variance will not alter the essential character of the general vicinity as the building is set well back from Poplar Level Road and the most affected neighboring property is a cemetery; and

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

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed hotel addition will mostly affect a cemetery; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is irregular in shape and the location of the proposed hotel is constrained by the existing development on the site; 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 because the hotel could not be constructed within a 45' height limit; 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 applicant is requesting the variance and has not begun construction; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from 5.7.1.B.1 to permit a building within the transition zone to exceed 45' (required: 45', requested: 85', variance of 40') (21-VARIANCE-0150)

The vote was as follows:

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

ABSENT: Commissioner Carlson.

All Waivers

Waiver # 1 from 10.2.4.B.1 to permit encroachment into the required property perimeter Landscape Buffer Area (LBA) along the south-western property line and eliminate the planting requirement (21-WAIVER-0135)

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Waiver #2 from 8.3.3.A.1 to permit more than 3 attached signs on the front façade of the building (21-WAIVER-0136)

Waiver #3 from 8.2.1.D.4.b to permit the changing image portion of a sign to exceed 60% of the overall sign (21-WAIVER-0157)

Waiver #4 from 8.2.1.D.1 to permit more than one changing image sign on a property (4 on the property) (21-WAIVER-0156)

Waiver #5 from 5.7.1.B.3 to not provide either the required type C buffer yard or the standards for primary façades established in the Neighborhood form district regulation in the transition zone (21-WAIVER-0150)

05:14:24 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, and the applicant's findings of fact, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because it is an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit. With the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition. The applicable southwest property line of the subject site mostly adjoins a cemetery located in a R-1 zoning district, rather than single family residences. Further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use. The first residential homes along Cavelle Avenue are right where the proposed parking lot ends; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Comp Plan 2040 filed with the rezoning application; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts as the parking lot and the drive lane is not being changed or altered. Further, the applicant has already implemented the construction of fencing for mitigation along this property line; and

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WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would require the removal of the existing drive aisle due only to a change in zoning for a hotel addition on the other side of the building; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the conditions are generally existing and have caused no known adverse effects; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 recommends appropriate buffers between uses that are in different density categories. The conditions which require the LBA are existing as the LBA is being made necessary by the zoning change and the CUP. The use of the property will not appreciably increase with the zoning change; 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 providing the LBA would require the applicant to remove an existing drive lane which services the rear of the existing structure and will service the rear of the proposed hotel; 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 as providing the required LBA would severely impact the capacity to service the existing and proposed structures; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because the signs are internal to the site facing northeast toward the parking lot and horse training track. Due to the setback from Poplar Level Road and the M-2 and M-3 zoned properties in front of the subject site, the signs will likely not be visible from the road. The only residential homes that could conceivably see the front of the building are those along Dyer Avenue, being over 800 feet away with an 8' wood fence along that property line. As a result, this is one of the only cases where the front façade is almost completely an internal aspect of the site; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Comp Plan 2040 filed with the rezoning application; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the applicant is removing

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one of the existing signs from the gaming facility building as part of the new proposed hotel addition; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because the number of signs allowed including both the existing gaming facility building and also the new proposed hotel building, This is because the hotel building is connected to the gaming facility building. If the hotel was constructed with a separation between the buildings, the signs would be in compliance; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the signage will face the rears of the most affected properties, which are commercially or industrially developed; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address attached signage; 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 five of the signs already exist and the two new proposed signs are needed to provide branding for the proposed hotel; 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 as the portion of the site with the new signage is proposed to be used as a hotel, and the signage is needed to direct customers to the hotel. The other five signs are existing on the site and have not posed any known problems; and

(Waiver #3) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because these changing image signs are an existing condition located on the northeast side of the building facing the horse training track and thus facing internal to the site. All of the surrounding properties on the north and east of the site are zoned M-2, which this property was originally zoned prior to be down zoned for the horse training facility. The changing image signs cannot be seen from Poplar Level Road, nor from the residential homes on Dyer Avenue, and thus do not adversely affect the adjacent property owners. Further, the signs are set back over 2,100 feet from Poplar Level Road, with trees and buildings blocking their visibility from Poplar Level Road; and

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WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of Plan 2040 filed with the rezoning application; and

WHEREAS. The Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the changing image signs are already in place and have been for 3 years with no complaints or issues; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because these signs are to promote the entertainment aspect of the venue which are ordinary and customary for this type of use. This is because these signs highlight the programming and excitement that takes place inside the venue. And as said, the signs have been in place for 3 years without complaints or negative impacts; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the signage faces the rears of the most affected properties, which are commercially or industrially developed. The signs are visible from Popular Level Road from a bridge that crosses the railroad to the north of the site; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address attached signage; 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 signs exist and could not easily be reworked to incorporate the changing image portion into the whole of the signs; 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 as the signs already exist on the site and reworking them to incorporate the changing image portion into a larger sign would require significant expense on the applicant's behalf for little benefit to the public; and

(Waiver #4) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because these 3 changing image signs are an existing condition located on the northeast side of the building facing the horse training track and thus facing internal to the site. All of the surrounding properties on the north and east of the site are zoned M-2, which this property was originally zoned prior to be down zoned for the horse training facility. The changing image signs cannot be seen from Poplar Level

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Road, nor from the residential homes on Dyer Avenue, and thus do not adversely affect the adjacent property owners. Further, the signs are set back over 2,100 feet from Poplar Level Road, with trees and buildings blocking their visibility from Poplar Level Road; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of Plan 2040 filed with the rezoning application; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the changing image signs are already in place and have been for 3 years with no complaints or issues. All 3 signs were shown on the elevations presented to the Board of Zoning Adjustment as part of the modified CUP approved in 2017 in 17CUP1055; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because these signs are to promote the entertainment aspect of the venue which are ordinary and customary for this type of use. This is because the 3 signs highlight the programming and excitement that takes place inside the venue. And as said, the signs have been in place for 3 years without complaints or negative impacts; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the three changing image signs on the façade face the rears of the most affected properties, which are commercially or industrially developed. The signs are visible from Popular Level Road from a bridge that crosses the railroad to the north of the site. The freestanding changing image sign at the Poplar Level Road entrance has been present and has not created any known adverse effects; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages the provision of signage which is compatible with the Form District pattern and contribute to the visual quality of their surroundings. The signs are existing and are compatible with a Suburban Workplace form; 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 signs exist and the attached signs are incorporated into the façade of the principal structure. The freestanding sign exists and is needed to direct traffic attempting to find the site to the entrance; and

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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 as the signs already exist on the site. Removal of the freestanding sign would deprive the applicant of necessary signage on Poplar Level Road. Removal of the attached signs would impact the architectural interest of the game room and proposed hotel; and

(Waiver #5) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because it is substantially the same as the waiver filed in this case for Table 10.2.3 to allow an encroachment of the existing parking lot and drive aisle into the LBA along the south-west property line (excluding the cemetery as not a being a residential use). Both of these waivers are for an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit. With the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition. Further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use. The first residential homes along Cavelle Avenue are right where the proposed parking lot ends. A portion of the southwest property line of the subject site adjoins a cemetery located in a R-1 zoning district and presumably LDC 5.7.1.B.3 does not apply; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of Plan 2040 filed with the rezoning application and the waiver will not violate the Comprehensive Plan because there are no new potential impacts to be mitigated by this request; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts created because the parking lot and the drive lane are not being changed or altered. Further, the applicant has already implemented the construction of fencing for mitigation along this property line; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would require the removal of the existing drive aisle due only to a change in zoning for a hotel addition on the other side of the building; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the most affected property is a cemetery, where the required LBA/façade treatment would not provide much or any public benefit; and

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WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate transitions between uses which are incompatible in nature. The proposed hotel and existing game room are not incompatible with the cemetery, and a screening fence will still be provided; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the provision of the LBA would require moving an existing building, and provision of the façade treatment would be an unnecessary expense to provide an interesting façade to a cemetery; 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 as the required LBA would require moving the existing building, and providing the façade treatment would require relocating the service area of the existing game room and the proposed hotel to another side of the building, negatively impacting adjacent properties which are occupied; now, therefore be it

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

Waiver #1 from 10.2.4.B.1 to permit encroachment into the required property perimeter Landscape Buffer Area (LBA) along the south-western property line and eliminate the planting requirement (21-WAIVER-0135)

Waiver #2 from 8.3.3.A.1 to permit more than 3 attached signs on the front façade of the building (21-WAIVER-0136)

Waiver #3 from 8.2.1.D.4.b to permit the changing image portion of a sign to exceed 60% of the overall sign (21-WAIVER-0157)

Waiver #4 from 8.2.1.D.1 to permit more than one changing image sign on a property (4 on the property) (21-WAIVER-0156)

Waiver #5 from 5.7.1.B.3 to not provide either the required type C buffer yard or the standards for primary façades established in the Neighborhood form district regulation in the transition zone (21-WAIVER-0150).

The vote was as follows:

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

ABSENT: Commissioner Carlson.

Approval by the Planning Commission for changing image signs to exceed a rate of change of once per 20 seconds as permitted under 8.2.1.D.5

05:16:10 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the adjacent street from which the signs are visible is Poplar Level Road, a major arterial with five lanes; and

WHEREAS, the Commission further finds that the nearest changing image sign is the freestanding sign at Poplar Level Road, approximately 2,000 feet away; and

WHEREAS, the Commission further finds that the signs are approximately 29' x 9'; and

WHEREAS, the Commission further finds that the signs are fully LED changing image without specific lines of text; and

WHEREAS, the Commission further finds that the nearest residential development is shielded from view of the signs by the game room building; and

WHEREAS, the Commission further finds that the text is not legible from Poplar Level Road, only the animation and glow of the signs; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested changing image signs to exceed a rate of change of once per 20 seconds as permitted under 8.2.1.D.5.

The vote was as follows:

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

ABSENT: Commissioner Carlson.

Conditional Use Permit for an animal racetrack under 4.2.7 (21-CUP-0194)

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05:17:10 On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets all applicable policies of the Comprehensive Plan; and

WHEREAS, the Commission further finds that, when appropriately managed, the proposed use is compatible with surrounding development and land uses; and

WHEREAS, the Commission further finds that the subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal; and

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

Animal Racetracks may be allowed in the C-2, C-M, M-1, M-2, M-3, and EZ-1 Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements:

- A. Setbacks – All buildings, structures, facilities, or storage areas shall be at least 100 feet from any property lines.

WHEREAS, the Commission further finds that the applicant requests relief from Item A to allow existing barns and other horse-related structures to be within 100 feet of the property line; and

WHEREAS, the Commission further finds that the signage relating to the animal racetrack is relatively small and located at the entrance to Breitenstein Avenue at Durrett Lane. The main signage for the site is related to the gaming facility; and

WHEREAS, the Commission further finds that the racetrack is used for training purposes and no races with an audience take place; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit for an animal racetrack under 4.2.7 (21-CUP-0194), with relief from Item "A" as discussed at today's hearing.

The vote was as follows:

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

ABSENT: Commissioner Carlson.

Detailed District Development Plan with Binding Elements

05:18:03 On a motion by Commissioner Brown, seconded by Commissioner Seitz, 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 no natural resources are evident on the site. The site is currently fully developed with an animal racetrack, a game room, and related parking. The expansion will take place within the area of existing parking. Required tree canopy will be provided; and

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

WHEREAS, the Commission further finds that no open space requirements are pertinent to the request; 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 is compatible with existing and projected future development of the area. The site will be developed at an appropriate intensity and scale for the form district and the area; and

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

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan with Binding Elements, **SUBJECT** to the following binding elements:

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1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, sitedisturbance, alteration permit or demolition permit) is requested:
 - A. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - B. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - C. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - D. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 2, 2021 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning

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Commission.

5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
6. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
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. If a traffic signal at the intersection of the project entrance and Poplar Level Road, as shown on the approved DDDP, is approved by Kentucky Transportation Cabinet (KYTC) in accordance with standard procedures, it shall be funded and installed by the Developer. Installation shall be in compliance with all KYTC specifications and requirements and will require a Permit, which must be obtained from KYTC District 05. Construction of the signal shall include all required permitting, inspections and the cost of all materials and labor. The traffic signal shall be fully installed and operational prior to requesting or the issuance of any certificates of occupancy for the development.
10. Applicant shall complete the storm water management improvements as shown on the December 2, 2021 presentation within 1-year of approval of this rezoning.

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The vote was as follows:

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

ABSENT: Commissioner Carlson.