

PLANNING COMMISSION MINUTES
December 6, 2018

PUBLIC HEARING

CASE NO. 18ZONE1032

Request: Change in zoning from PEC to OR-1 with variances and waivers; and Amendments to the General Plan Binding Elements and a Detailed District Development Plan with binding elements

Project Name: Clover Senior Housing
Location: 11700 Interchange Drive
Owner: Gault-Marsh Properties Southpoint LLC
Applicant: Clover Construction Management West
Representative: Blomquist Design Group
Jurisdiction: Louisville Metro
Council District: 13 – Vicki Aubrey Welch

Case Manager: Julia Williams, AICP, Planning Supervisor

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

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

Agency Testimony:

01:13:27 Julia Williams presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:21:25 In response to a question from Commissioner Howard, Ms. Williams clarified the locations of the variance requests.

The following spoke in support of this request:

Marv Blomquist, Blomquist Design Group, 10529 Timberwood Circle Suite D, Louisville, KY 40223

Rob Sweet, 5721 Dragon Way #300, Cincinnati, OH 45227

Summary of testimony of those in support:

01:22:12 Rob Sweet, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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01:28:30 In response to a question from Commissioner Jarboe, Mr. Sweet said the proposed sizes of the apartments are 700 and 850 square feet, respectively. In response to another question, Mr. Sweet added that, since this is rental property, the age of tenants can be restricted to 55.

01:30:32 In response to a question from Commissioner Lewis, Mr. Sweet pointed out the main, secured entrance of the building. There are service entrances, and emergency exits. In response to a question from Commissioner Daniels, Mr. Sweet explained why there are only six ADA parking spaces planned out of 120 total spaces (see recording for detailed discussion.)

01:32:04 Commissioner Brown asked if any consideration had been given to making a pedestrian connection to the retail uses that abut the site to the east, and all along Mud Lane. Mr. Sweet said no, since it would involve tearing out trees and also because a pedestrian connection would terminate into the back of a shopping center. It was felt that that would pose a safety hazard for older/elderly people.

01:33:25 In response to a question from Commissioner Carlson, Mr. Sweet discussed the front elevation.

The following spoke in opposition to this request:

No one spoke.

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

01:35:10 Commissioners' Deliberation

Change in zoning from PEC to OR-1

01:39:05 On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution, based on the Cornerstone 2020 checklist and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal will generally meet

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the required setbacks for the form district; office zoning is compatible with the mix commercial/industrial zoning of PEC albeit less intense than the surrounding zoning; PEC permits office uses; and a proposed sidewalk along Southpoint Drive will extend to connect to the existing sidewalk in the area; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because OR-1 zoning is generally compatible to the existing office/warehouse zoning of the area as the proposal only differs in intensity; the building materials are more related to the existing and proposed residential in the area and are more compatible to the existing residential rather than that of the existing office/warehouses; the proposal is compatible with the adjacent areas as it allows for both office and residential uses. OR-1 zoning allows for multi-family which is currently not permitted in the existing PEC zoning. Buffers and open space are provided on the site; Transportation Planning has not indicated that the development would cause adverse impacts to traffic; lighting will comply with the LDC; the OR-1 proposal permits office uses in addition to a variety of densities. The development plan indicates a proposal for multi-family which is not common in the SWFD but multi-family zoning can be found in the C-2 zoning adjacent to the site; the proposal is for high density zoning not located along a transit corridor but is located in an office/industrial activity center; the proposal has been specifically identified for senior users; the proposal allows for both office and residential uses. Multi-family zoning is located adjacent to the site. The building design is similar to the other proposed multi-family in the area; LDC compliant buffers and open space are provided on the plan to separate the site from the adjacent office/warehouse zoning; and setbacks and building heights are in compliance with LDC requirements; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because recreational open space is provided on the site in the form of an interior courtyard. There is also a detention basin along the frontage; the site is 100% covered in tree canopy where 14.5% will be preserved. The site is meeting the minimum for tree canopy; 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 is 100% covered in tree canopy where 14.5% will be preserved. The site is meeting the minimum for tree canopy; and no significant preservation features are present on the subject sites; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because roadway improvements are not being required by Transportation Planning; no new roadways are created with the proposal. Cross access

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is not appropriate with the proposed land uses; and the proposal includes the dedication of ROW; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because no new roadways are created with the proposal. Cross access is not appropriate with the proposed land uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because all types of transportation are provided for on the site. There will be interior pedestrian connectivity to the sidewalk in along the private road. While transit is not currently available pedestrian access will be. The private sidewalk network connects to a larger network within the adjacent business park; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because MSD has preliminarily approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because the site is 100% covered in tree canopy where 14.5% will be preserved. The site is meeting the minimum for tree canopy; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because planned utilities will be expanded to serve the site; an adequate water supply is available to the site; and the Health Department has no issues with the proposal; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Change-in-Zoning from PEC to OR-1 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Variance

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01:39:57 On a motion by Commissioner Howard, 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 the variance will not adversely affect the public health, safety or welfare because the proposed parking is located on the side and rear of the property where the property is adjacent to multi-family which is the same use proposed for the site; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because the proposed parking is located on the side and rear of the property where the property is adjacent to multi-family which is the same use proposed for the site; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed parking is located on the side and rear of the property where the property is adjacent to multi-family which is the same use proposed for the site; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the proposed parking is located on the side and rear of the property where the property is adjacent to multi-family which is the same use proposed for the site; and

WHEREAS, the Commission further finds that the requested variance arises from a special circumstance in that the property is being developed for multi-family residential in an office/residential zone where the encroachments are minimal and also located adjacent to existing multi-family; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed parking is located on the side and rear of the property where the property is adjacent to multi-family which is the same use proposed for the site; and

WHEREAS, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the existing pipeline that runs through the site nor the adjacent developed existing multi-family; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from Chapter 5.3.1.C to permit encroachments in the 15' rear yard setback and 18' side yard setback to the east as shown on the development plan.

The vote was as follows:

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

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Waiver #1 - Waiver from Chapter 10.2.4 to permit encroachments into the 25' LBA along the west property line and 15' LBA along the south property line.

Waiver #2 - Waiver from 10.2.4 to permit over 50% overlap of an easement into the 20' LBA and to eliminate the planting and screening requirements along the east property line

01:40:51 On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since all the landscape requirements will still be met in the buffer; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within

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urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The proposal meets the comprehensive plan guidelines since all the landscape requirements will still be met in the buffer; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since all the landscape requirements will still be met in the buffer; 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 all the landscape requirements will still be met in the buffer; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners since the adjacent property is the same use as the proposed site; and

WHEREAS, the Commission further finds that the 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 proposal meetings the compatibility guideline since the adjacent property is the same use as the proposed site; 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 since the adjacent property is the same use as the proposed 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 would create an unnecessary hardship on the applicant since the adjacent property is the same use as the proposed site; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver #1 - Waiver from Chapter 10.2.4 to permit encroachments into the 25' LBA along the west property line and 15' LBA along the south property line; **AND** Waiver #2 - Waiver from 10.2.4 to permit over 50% overlap of an easement into the 20' LBA and to eliminate the planting and screening requirements along the east property line.

The vote was as follows:

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

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Amendments to the General Plan Binding Elements

01:42:03 On a motion by Commissioner Howard, 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 there do not appear to be any historic resources on the subject site. The site is currently 100% covered in tree canopy where 14.5% is being preserved. The minimum 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 has approved the preliminary development plan; and

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WHEREAS, the Commission further finds that open space requirements are being met on the site; and

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

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

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

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Amendments to the General Plan Binding Elements, to read as follows:

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions, or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
- 1a. Prior to development of each site or phase of this project, other than Lot 3, the applicant, developer, or property owner shall obtain approval of a detailed district development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - screening, buffering, landscaping, tree preservation
 - density, floor area, size and height of buildings
 - points of access and site layout with respect to on-site circulation
 - land uses
 - Signage
 - loading berths
 - parking
 - sidewalks
 - site design elements relating to alternative transportation modes

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- outdoor lighting
 - minor subdivision plat approval
 - air pollution
 - the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - dumpsters
2. The commercial (C-1 and C-2) development shall not exceed 312,494 square feet of gross floor area. ~~and Lot 3 in the PEC district shall not exceed 87,331 square feet.~~
3. There shall be no direct vehicular access to Preston Highway from outlots 3, 4, 5 or 6 and there shall be no direct vehicular access from tract 6-A-1 to Elda Drive except for a gated emergency access.
4. There shall be no freestanding signs permitted on site except for
- | | |
|---|---------------------------|
| the following: (2) Project identification signs | 6 feet high, 32 sq. ft. |
| (2) Shopping Center identification signs | 30 feet high, 144 sq. ft. |
| Freestanding outlot identification signs | 25 feet high, 64 sq. ft. |
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. There shall be no outdoor storage on the site.
7. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff and height of the light standard shall be set so that no light source is visible off-site.
8. 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.
- 8a. The applicant shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas and Woodland Protection Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the

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approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.

9. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty)
 - 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 Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
10. 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.
11. 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.
12. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
13. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

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14. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to commencement of any clearing, grading, or construction activities.
15. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
- ~~16. The materials and design of proposed structures on Lot 3 shall be substantially the same as presented at the July 15, 1999 Planning Commission meeting.~~
17. Lot 2 shall be limited to a home and garden center, since the justification for the parking waiver is based on this type of use.
18. Subdivision of Lots may be created using the minor subdivision plat process in conformance with the rules and regulations governing minor subdivisions. A master subdivision plan shall be provided to the Planning Commission showing all current subdivision lots being created and their associated minor subdivision plat docket numbers. This master plan shall be kept current for the entire duration of the development process and shall show any revisions of existing lots, (example: shifting property lines and lot consolidation).
19. All dedicated streets shall be created utilizing the major subdivision record plat process. Such record plat shall be recorded prior to the issuance of a certificate of occupancy for any building on a lot with access to proposed Road A. No more than 5 lots accessible only by a private access easement shall be created until said roadway has been dedicated as a public right-of-way. The intent of this binding element is to assure that all lots have frontage on a dedicated public roadway.
20. The developer, successor or assigns shall lengthen the existing northbound left turn lanes at the following locations to meet AASHTO design standards as approved by the Kentucky Department of Highways: Preston Highway at Antle Drive
Preston Highway at Mudd Land and Mount Washington Road
Preston Highway at proposed Road A
21. The developer, successor or assigns shall construct a new southbound right turn lane from Preston Highway onto proposed Road A to meet AASHTO design standards as approved by the Kentucky Department of Highways.
22. The developer, successor or assigns shall modify the existing flashing

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signal at Preston Highway and proposed Road A as required by the Kentucky Department of Highways.

23. Timing of road and signal improvements shall be determined at time of detailed district development plan approval and/or construction plan approval for any public roads.

24. All bonds for the 9-105-89 (Southgate I) and 9-2-97 (Standiford Plaza) cases, as previously required, shall be in place.

The vote was as follows:

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

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Revised District Development Plan with Binding Elements

01:43:01 On a motion by Commissioner Howard, 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 there do not appear to be any historic resources on the subject site. The site is currently 100% covered in tree canopy where 14.5% is being preserved. The minimum 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 has approved the preliminary development plan; and

WHEREAS, the Commission further finds that open space requirements are being met on the site; and

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

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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. Buildings and parking lots generally meet all required setbacks; and

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

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

All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:

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

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- b. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 6, 2018 Planning Commission meeting.

The vote was as follows:

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

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.