

**MINUTES OF THE PUBLIC REVIEW
HELD BY THE
LOUISVILLE METRO PLANNING COMMISSION**

May 17, 2006

DOCKET NO. 9-99-79 & 9-8-00WV

Case: 9-99-79 & 9-8-00WV, Revised Detailed District Development Plan and waivers.

Project Name: Providence Point

Location: 2050 Herr Lane

Owner(s): Robert G. Stallings – Stock Yards Bank & Trust Co.,
Trustee of Samuel J. Stallings

Applicant: Scott Hagan, Hagan Properties, LLC

Representative: Bill Bardenwerper, Bardenwerper, Talbott & Roberts

Project Size/Area: 19.45 acres

Jurisdiction: Louisville Metro

Council District: 16 – Kelly Downard

Staff Case Manager: Kristen Millwood, Planner II

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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper & Talbott, 8311 Shelbyville Road, Louisville, KY 40222

Bob Koch, Fugelberg Koch Architects, 2555 Temple Trail, Winter Park, FL 32789

Jon Henney, Gresham, Smith & Partners, 101 South Fifth Street Suite 1400, Louisville, KY 40202

Tony Lewis, Gresham, Smith & Partners, 101 South Fifth Street Suite 1400, Louisville, KY 40202

Mark Sparks, Gresham Smith & Partners, 101 South Fifth Street Suite 1400, Louisville, KY 40202

Daniel Huneke, 6302 Wolf Pen Branch Road, Louisville, KY 40059

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Dick Reese, 339 Lanai Court, Louisville, KY 40245

Dennis Neyman, 10523 Buckeye Tr., Louisville, KY 40026

Jim Mims, 12975 Shelbyville Road, Louisville, KY 40243

Norm Graham, 500 West Jefferson Street Suite 2450, Louisville, KY 40202

Ed Rapp, 7411 Maria Avenue, Louisville, KY 40222

The following spoke in opposition:

Charles A. Brown Jr., 2424 Eagles Eyrie Court, Louisville, KY 40207

John Vaughan, 1508 Valley Brook Road, Louisville, KY 40222

Dr. Nicholas Glaser, 1508 Ocala Road, Louisville, KY 40222

Chuck Hixenbaugh, 7011 Dartmoor Drive, Louisville, KY 40222

Peggy W. Swain, 1804 Crossgate Lane, Louisville, KY 40222

Sherry Humphrey, 2813 Avenue of the Woods, Louisville, KY 40241

Theresa Stanley, 1802 Winsford Place, Louisville, KY 40222

John Singler, 4625 Lowe Road, Louisville, KY 40220

Phil Ardery, 7404 Greenlawn Road, Louisville, KY 40222

Jeff Burnett, 2312 Donleigh Court, Louisville, KY 40222

Betty Bandy, 1814 Herr Lane, Louisville, KY 40222

Sally Craxton, 1802 Corona Court, Louisville, KY 40222

The following spoke neither for nor against:

Mark Stiebling, 4923 Grantham Place, Louisville, KY 40222

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Jerry Hinton, 2326 Thornhill, Louisville, KY 40222

AGENCY TESTIMONY:

Kristen Millwood presented the case and reviewed the structures to be built and their square footages. She said staff recommended approval of the plan with the following conditions of approval:

That the gates are deleted from the plan; that the southernmost access point that cuts through the adjacent property is moved north so that it is wholly located only on the subject property; that additional bicycle parking be added; that additional public recreational open space be added; that the façade elevations comply with the code and be approved by PDS staff prior to transmittal; that benches be added on both sides of Herr Lane at the entrance to Ballard High School, per the request of Transit Authority of River City; and that the Board of Zoning Adjustment approve the requested variances.

Staff recommended that the following waivers be denied:

For the amount of space between interior landscaped areas; for the amount of private recreational open space; for the landscape buffer between the OR-3 and R-4 zones; and for the pedestrian and vehicular connections to adjacent sites.

Staff recommends that the following waivers be approved:

For the landscape buffers between the C-1 and R-4 zones; and the waivers between the buffers for the C-1 and OR-3 and OR-3 and C-N zones.

Staff recommends that the changes to the binding elements detailed in the findings section of the staff report be made.

Ms. Millwood showed a Power Point presentation that showed maps and photos of the site and the surrounding area. She also detailed some issues that staff had with the proposal, specifically road improvement needs and traffic issues.

She explained in detail the reasons for moving the access north and off of the adjacent property (owned by the Kentucky Artificial Breeding Association [KABA].) She said that, in the past, the Planning Commission has allowed access to a higher-intensity use through a lower-intensity one in some cases. However, this access is a primary access point to residential use on the site, and

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it does not connect to the R-4 property. This site uses access through a residential area to get to an office/residential zone.

Ms. Millwood also detailed the binding element recommendations (see staff report, or transcript for verbatim details.)

Regarding the open space, Ms. Millwood stated that more than 50% of the proposed open space is private – more public open space is needed.

In response to a question from Commissioner Adams, Ms. Millwood stated that, if the driveway was moved completely onto the site, there should be a landscape buffer provided between it and the adjoining property of 15 feet. However, the applicant has not agreed to do that.

SUMMARY OF TESTIMONY OF PROPONENTS:

Bill Bardenwerper, counsel for the applicant, distributed exhibit books and made a Power Point presentation that he said demonstrated compliance with the Land Development Code and all applicable Guidelines and Policies and the Cornerstone 2020 Comprehensive Plan. He introduced other applicants' representatives who have been working on this project.

Mr. Bardenwerper stated that this review follows a review at the LD&T Committee and multiple meetings with neighbors and persons who were involved in the most recent litigation involving this property. Mr. Bardenwerper explained that this property had been the subject of nearly 40 years of disagreement, involving multiple different development plans, and he detailed some aspects of the litigation. He said that years ago they presented a plan that involved mostly residential and office condominiums and some retail similar to this plan, although this plan is different and has mostly below-grade/structured parking.

Mr. Bardenwerper said that a more extensive list of binding elements was included in the settlement agreement than are presented in the staff report, but that the applicant has agreed to the ones in the staff report.

Mr. Bardenwerper explained that Bob Koch of Fugelberg Koch Architects developed a plan that was ultimately presented to the two Plaintiffs' attorneys (Norm Graham and Bill Seiller) for settlement of the two lawsuits, one presently before the Kentucky Supreme Court and one still pending in Jefferson Circuit Court. After that, Mr. Bardenwerper said they began meeting with area residents themselves, which included the Brownsboro Road Area Defense (BRAD)

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organization, various individual neighbors/BRAD members and Dan Huneke (all represented by Bill Seiller) and Thomas Jefferson Unitarian Church (represented by Norm Graham).

Mr. Bardenwerper explained that he and his client representatives plus land planners and architects/engineers then met with various litigants on numerous occasions, including several meetings at Thomas Jefferson Unitarian Church. He said that the applicant worked hard for many months to try to address all of the litigants' concerns and eventually worked out a very detailed settlement agreement, which he showed to the Planning Commission both in a booklet previously presented at the time of filing this RDDDP for LD&T review and then with this public review Power Point presentation. The two remaining parties to the litigation, Dan Huneke and Thomas Jefferson Unitarian Church, signed the settlement agreement. Mr. Bardenwerper said the agreement includes detailed conditions of plan approval although some were omitted at the discretion of DPDS staff. Nevertheless, the details in that settlement agreement would be binding on the parties to the litigation irrespective of whether or not they are included in binding elements, he said. Mr. Bardenwerper also said that he wanted neighbors and litigants to be assured that there are these protections to those agreed-upon binding elements with the Planning Commission.

Mr. Bardenwerper showed an aerial photograph of the site and surrounding property, as well as a zoning map which he noted demonstrates that the property is considered zoned commercial and office (C-1, C-N and OR-3), because the last official act involving this property was a favorable decision by Fiscal Court following a favorable recommendation by the Planning Commission. He said that these zoning districts are not needed, but they do serve the purpose of this now mostly residential, mixed-use development, as opposed to the entirely commercial development that it was before.

From that, Mr. Bardenwerper showed slides of the surrounding land use context. He showed the predominance of fast-food restaurants, gas stations, old-style strip commercial retail, offices that are large and up to three stories in height, offices that are condominium-style with large parking lots, apartments, condominiums that also reach three stories in height, condominiums that reach as high as 12 stories in height (the Glenview and the new Seminary Woods development under construction), some intensely-developed residential communities, like the Alia development next to Ballard High School; many institutional facilities, like churches (The Temple and Thomas Jefferson Unitarian Church), Ballard High School, Kammerer Middle School and Wilder Elementary School, plus office buildings and apartments quite close by like the apartments at

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the corner of KY 22 and Lime Kiln, right across KY 22 from Herr Lane and the Rodes Clothing Store building just west of the proposed development.

With this site context, including intense uses and taller buildings within the U.S. 42-KY 22 Town Center, which is at the edge of this property which exists within the Suburban Neighborhood Form, Mr. Bardenwerper asked architect Bob Koch to explain his assignment and how he went about designing this project.

Bob Koch introduced himself and described his firm's experience with neo-traditional and mixed-use developments in many places around the country.

Mr. Koch then explained how the project lays out with four Brownstone-style residential condominium buildings on each of the two ends for a total of eight, not exceeding 39 units per building for a total of no more than 312 residential condominium units. He said that first floor units will have stoops onto the street, but that there will be a main access point, both on the first floor and within the below-grade garage with access to all three floors, as these are actually stacked flat-style condominium buildings, even though they look like townhome-style Brownstones. He said that the sides are nearly identical all the way around, although the buildings are U-shaped with a courtyard in the middle and shorter lengths along their Herr Lane frontages, then longer sides extending back into the development. There will be streetscapes of parallel parking within the complex to give a feel of internal street networks. With that and the below-grade parking, he said that the development does not end up with large fields of parking. Some of the parking is enclosed, he said, in a two-level parking garage behind the mixed-use building on one side. He showed rear elevations of these buildings so that even the rear of the Mixed-Use office/retail building has a front-style appearance. He also showed a photo-shop elevation of the parking garage, which can be no more than 14 feet high and no less than 8 feet high so that it has the affect of a brick wall.

Mr. Koch also discussed the principles of CPTED (Crime Prevention Through Environmental Design.)

Mr. Koch also showed views from off-site on the north to on site on the south and from the northern entrance/side of the property to the north commercial area and the landscaping that is proposed along there to both to protect this development from the intense commercial development to the north and vice versa. Then to the south, photographs were shown of that property line and the proposed landscaping there. A letter from the Kentucky Artificial Breeders Association (KABA) was presented agreeing to the shared access. Mr. Koch also detailed

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the building designs, which also included the kinds of open spaces and amenities along the front of the mix-use building.

Jon Henney, a landscape architect and planner with Gresham Smith & Partners, explained the various waivers that were requested. The old/currently approved plan was compared to the new plan. The old plan was all commercial and did not require waivers and variances like this plan because this is a mixed-use plan, and mixed-use plans, Mr. Henney and others explained, require waivers and variances because the different zoning districts would otherwise make mixed-use developments of this kind on already-zoned properties difficult, if not impossible. Mr. Henney, along with assistance from Mr. Bardenwerper, explained that some waiver requests were due to the internal zoning division lines, because along the west property line Thomas Jefferson Unitarian Church has no objection, and because of the split between public vs. private open space. Included in the Power Point presentations and exhibits books presented to the public hearing were explanations of the waivers required and the reasons therefore. Mr. Henney and Mr. Bardenwerper also explained the variances, which will go to the Board of Zoning Adjustment for approval; setbacks along the church property line, which the church has approved; and the amount of building comprising the front setback line, which they argued is justified because of the park plaza at the focal point entrance to the development. [For a verbatim explanation, see transcript on file.]

Mr. Henney also mentioned that they were dropping the waiver requests for elimination of landscaping between parallel parking and for the gates at either side of the residential condominium buildings. All applicant's representatives agreed that the main entrance to the overall site was also the primary entrance to the residential condominiums.

Mr. Bardenwerper stated that the primary entrance is the main access point to the development and where the focal point is for the park plaza, as well as the signalized entrance.

Tony Lewis, traffic engineer with Gresham Smith & Partners, then presented the traffic report, which had been earlier discussed in detail with the Metro Works Department and Kentucky Department of Transportation (KDOT). He showed the intersection improvements at Herr Lane and KY 22, Herr Lane and Ballard School and Herr Lane and Wesboro Road. The intersection plan showed the new lane improvements, the turning arrows that will be painted on the pavement so that the turning movements are clearly shown, and the likely location and the

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likelihood of a traffic signal at the main entrance to the development at Ballard High School.

Mr. Lewis also presented the AM and PM average daily trips (ADTs) showing that less peak hour traffic is anticipated than previously and, although more AM peak hour traffic is anticipated, the PM peak traffic figures are the key ones upon which traffic improvements are based. He then showed the traffic levels of service for all the various turning movements/intersections demonstrating that, both in the AM and PM peak hours, virtually all turning movements improve or remain the same from present to the future project with planned improvements. Only one movement ends up getting worse. A binding element was agreed to with respect to the traffic signal.

Mark Sparks, a civil engineer with Gresham Smith & Partners, explained existing draining patterns and the plan for a underground detention basin. Photographs were also shown of what underground detention basins look like and it was briefly explained how they operate. A binding element was also agreed to with respect to storm water management pertaining to a 200 percent increase in volume on site.

Daniel Huneke spoke in favor of the plan. He said that, as a developer himself, he was very impressed by the architectural and technological features he saw on the plan and has decided to drop the suit and endorse the project.

Dick Reese presented a brief synopsis of Thomas Jefferson Unitarian Church's position on the proposed development. He said their congregation considers this a reasonable compromise of the planned commercial development and now supports this development.

Dennis Neyman, a representative of the board of Thomas Jefferson Unitarian Church, said that the congregation of the church voted unanimously to authorize their Board to enter into settlement agreement with the applicant.

Jim Mims, Norm Graham, and Ed Rapp were called but declined to speak.

Commissioner Adams asked Mr. Henney to detail some aspects of the brick wall that is going to be adjacent to the church side, from the parking garage running back towards the north. In response to another question from Commissioner Adams, Mr. Henney and Mr. Bardenwerper discussed the access across from Westport Road, and some landscaping issues.

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In response to a question from Commissioner Wells-Hatfield, Mr. Bardenwerper elaborated on the requested variances.

Commissioner Blake asked about a shared access with KABA and the possibility of tractor trailers using that access. Mr. Bardenwerper said that was correct. Mr. Blake asked what would happen with the easement if the KABA property was sold. Mr. Bardenwerper said that easement would run with the land and go to the next property owner.

***NOTE: a five minute break was taken before the opposition began their presentation.**

SUMMARY OF TESTIMONY OF OPPONENTS:

Jeff Burnett was called but declined to speak.

Betty Bandy said she felt the development was nice but it was in the wrong location. She feels it is too dense for the surrounding residential community. She does not believe that enough research has been done to evaluate the impact the development will have on local traffic, on the water system, or on utilities, especially when a new large development has been proposed to go in up the street.

Sally Craxton, a neighbor, objects to the plan because of the traffic congestion it will produce, and also the lack of need for more retail in this area. She said Herr Lane is already "a bottleneck" and has a great deal of traffic congestion already on it, mostly due to school traffic. She said she drove around a three-mile radius yesterday and found much vacant retail space, including some in Holiday Manor and the Camelot shopping center, which at least have infrastructure already in place and are easily accessible.

Phil Ardery said he lives about 200 yards from this property. He said the people who spoke in favor of this development were not residents but were those who had a monetary interest in the development.

John Singler, the attorney for the City of Graymoor-Devondale, said the Graymoor-Devondale residents were most concerned about the high density of this proposal. The residents were concerned about the height of the buildings that will be closest to the Graymoor-Devondale homes. He asked for as much buffering as possible. The Graymoor-Devondale residents were also concerned about drainage – the idea of underground detention was not well understood and there were many questions about it. Regarding traffic, the residents were

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concerned about what would happen if the applicant can't get a light at that main entrance. Does the applicant have enough land to put in the proposed road improvements to Herr Lane? Commissioner Ernst said an MSD representative, who is present, will address the drainage concerns during the "rebuttal" portion of the hearing; also the applicant's representatives will address the other issues at that time as well.

Theresa Stanley asked if this proposed development met all the applicable Cornerstone 2020 guidelines. She said the applicant has a right to develop this property, but also has a responsibility to protect the existing character of this area. She said this development is still too dense and intense, and is not compatible with the existing character of Herr Lane. She reviewed some *Guidelines that she felt were not being met by this development*. She asked particularly if schoolchildren crossing Herr Lane would be safe. Ms. Stanley asked why an urban-type of development is being located in a suburban area.

Sherry Humphrey says she has lived in this immediate area her whole life. She is concerned about the growth of high-density developments in this area with very little greenspace. These high-rises and high-density developments took up what was formerly greenspace for the existing residents. She noted that the Seminary Woods development has not proceeded as it was supposed to, with a crane that has been in place for a year and a half, and is concerned that residents will have to deal with that same kind of construction debris and mess with this development as well. She said there is no authority in the city to compel the developers to finish what they start. She asked what the vision, strategy and goals are for the Brownsboro Road corridor – there was apparently open space, a park, and a lake that had been discussed. Ms. Humphrey cited the lack of sidewalks and safe pedestrian connectivity. She is concerned about safety issues due to the increase in traffic, which she says is already very heavy, and the accompanying rise in air pollution and ozone that comes with a traffic increase. She asked who will be paying for the improvements to Herr Lane? Will tax money be used?

Peggy W. Swain, mayor of the City of Crossgate, said this plan is more dense than the old one and is upset about the requested variance/s to allow encroachment into the required setback.

Chuck Hixenbaugh, a nearby resident, said that Westport Village, a large development less than one mile down Herr Lane, is currently under construction. A 39-acre development called The Midlands is being proposed about one-third of

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a mile away from this site. He asked the Commission to consider what is going on in the whole area, not just on this property.

Dr. Nick Glaser, a resident of Graymoor-Devondale, said that one aim of Cornerstone 2020 is to bring people together in liveable communities. He said that this project will damage the liveability of Graymoor-Devondale. He feels that the development will have an adverse impact on the community. He was also concerned about the possibility of outdoor amplified music.

Phil Ardery spoke again and showed photos of the northbound morning traffic on Herr Lane near Ballard High School. He said the Planning Commission was given "selective" information from the traffic study, and that even the entire study fails to address many concerns that residents have. He said that a traffic light installed by the Ballard High School entrance will back up traffic to the point that neighbors trying to exit Wesboro onto Herr Lane will not be able to get out. He said that the projected traffic impact under this new plan is greater than the projected traffic impact for the previously-presented 2000 plan.

John Vaughan, the Mayor of the City of Graymoor/Devondale, said this is an important piece of "transition" property from the densely-commercial U.S. 42 corridor to the more residential Herr Lane.

Charles Brown, a real estate developer, said he has significant investment in property in this area. He said this is a great plan; however, this plan is 750,000 square feet, which is as large as most of the malls in the State of Kentucky. He said this is way too dense for this area; also, there is another very large piece of property to the west that will be imminently developed that will cause traffic problems. He said the neighbors are being encroached upon with the parking garage. He was concerned about the burgeoning traffic causing problems for emergency vehicles as well as commuters. He said he is not opposed to the project but still feels that this is too dense for this area.

SUMMARY OF TESTIMONY OF THOSE NEITHER FOR NOR AGAINST:

Mark Stiebling was called, but declined to speak, saying others had made the points he wished to make.

REBUTTAL:

Commissioner Ernst reminded Mr. Bardenwerper about some of the questions and concerns the various speakers wanted addressed.

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Mr. Bardenwerper stated that there was only a very small amount of total retail included within the proposed development. He also reminded the Planning Commission of the fact that this is a mixed-use development and that these kinds of developments are very difficult, particularly those that take on neo-traditional design elements. For example, he said, fast-food restaurants, residential patio home condominiums of the typical style and design that the Planning Commission sees every week, etc. are the kinds of projects that are relatively easy because residents and consumers understand them. These new, neo-traditional forms of planning are difficult in part because people can't as well comprehend what is being proposed. It is this kind of planning that the Planning Commission has said it wants to see, and Mr. Bardenwerper argued that, if that is so, the Planning Commission needs to support this, like they did Norton Commons, another (and much larger) scale, very challenging neo-traditional development

Mr. Bardenwerper answered Graymoor-Devondale city attorney John Singler's questions about density, saying there will 312 maximum units, which could be lower if people purchase larger units. He said as to height, there are a number of buildings in the area that are three stories or taller, including the Glenridge Apartments, Aspenwood Condominiums, Seminary Woods condominiums, the Glenview condominiums, the Fenley Office Building, and Ballard High School.

As to the detention basin, he said it will be designed to MSD's standards.

As to right-of-way issue, he said that the developer plus Jefferson County Public Schools were giving up sufficient right-of-way for the road improvements proposed.

As to Phil Ardery's traffic synopsis, he said yes, there would be more traffic. Anything proposed for this site will cause more traffic, he said, just as it will cause more surface water runoff. But Mr. Bardenwerper said that the concern is mitigation and that this proposal was mitigating the impacts of both traffic and surface water drainage in very positive manners.

Mr. Bardenwerper ended his presentation by showing a Courier-Journal editorial that stated that change is inevitable, but good change is not necessarily inevitable. Again, he explained that good developments need encouragement because otherwise what is common is all that the Planning Commission will ever see. He also recommended to the Planning Commission a number of books pertaining to subjects which were all prepared by the Urban Land Institute.

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Regarding the requested waivers, Mr. Bardenwerper said the developer agreed to omit the proposed gates. He said the south access is a secondary access point and should not be redesigned. By lowering the square footage of one building, he said, the whole plan would have to be redesigned. Regarding the open space waiver, he said the condominium residents need some private space, and the applicant would like to retain the private space that has been dedicated for that purpose. He said there is usable open space in the plaza areas and the park at the front. The requested waiver along the property lines of the Thomas Jefferson Unitarian Church is not being contested by that entity; they like the proposed screening and buffering along the west wall.

Commissioner Adams asked Mr. Bardenwerper to elaborate about the streetscape view along Herr Lane and how close the buildings were. Mr. Bardenwerper detailed exactly what was proposed to be built there (see transcript for verbatim details.) The applicant is proposing that the streetscape be brownstone buildings, and landscaping. Mr. Koch gave further details about the elevations and designs facing Herr Lane. Commissioner Ernst noted that, should this request be approved, Binding Element #1 requires the applicant to come back with exact details of those buildings. Mr. Bardenwerper said the applicant would be fine with assuring the Commission that these building designs will go back to staff for review consistency with the Code.

Commissioner Ernst asked the representative from MSD to come forward and address some questions regarding maintenance and the situation of the underground detention basin.

Pat Barry, representing the Metropolitan Sewer District [MSD] said the maintenance of the basins, both above ground and below ground, will ultimately fall to the developer. Initially, the design has to meet MSD standards; he said MSD has reviewed the designs and found them "above and beyond" those standards. He said MSD will inspect the construction, and also the developer will post a bond that MSD will hold for a period of time to make sure the basin functions properly. The basin must be placed in a permanent MSD easement. There are checks in place to make sure the developer does maintain the basin and it will be inspected periodically.

In response to a question from Commissioner Adams, Paula Wahl, Engineer Supervisor with Louisville Metro Public Works, reviewed the projected traffic numbers from staff perspective (before and after construction.) Ms. Wahl explained the traffic study process, and said the applicant has updated traffic projections for the future in addition to their own projected traffic numbers. The

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applicant has also worked with Ballard High School and has provided additional improvements on the Ballard driveway into the school.

Commissioner Wells-Hatfield asked about a question that had been raised by one of the neighbors. The resident had asked if Herr Lane was wide enough for planned road improvements, and if taxpayer money was going to be used for any of it. Ms. Wahl said the developer is responsible for the improvements, including the final surface overlay and the cost of the signal installation. There will be no government funds used.

A transcript of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the transcript or to obtain a copy.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

Revised Detailed District Development Plan

On a motion by Commissioner Adams, the following resolution was adopted:

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan for Docket Nos. **9-99-79 & 9-8-00WV**, subject to the below-listed conditions of approval and the above-listed binding element(s) as recommended by Planning Commission staff; **and ON CONDITION** that the requested variances are approved by the Board of Zoning Adjustment; and:

- That additional bicycle parking be added to the plan.
- That the façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to transmittal of the plan to the appropriate agencies.
- That benches are included on both sides of Herr Lane at the entrance to Ballard High School .
- That the changes to the binding elements detailed in the findings section of the staff report be made.

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The vote was as follows:

YES: Commissioners Ernst, Carlson, Adams, Jones, Howard, Hamilton, Blake, Queenan, and Wells-Hatfield.

NO: No one.

NOT PRESENT: Commissioner Abstain.

ABSTAINING: No one.

Waivers

WHEREAS, the Louisville Metro Planning Commission finds that the applicant has requested waivers to **(1)** to permit omission of the 15-foot LBA required between OR-3 and adjacent R-4 along a portion of the south property line in the area where the access drive is proposed and **(2)** to omit the LBA buffer along the internal zoning lines between the OR-3 and C-N zones and between the OR-3 and C-1 zones, as required by Section 10.2.4/A of the Land Development Code; and **(3)** to permit more than 50 percent of the open space required to be provided as private open space, as required by Section 5.12.4.A of the Land Development Code; and **(4)** to permit reduction of the 25-foot buffer between C-1 and R-4 zones to 15 feet required by Section 5.3.2 of the Land Development Code; and

WHEREAS, the Commission further finds that the requested waiver to permit parking and a parking structure to encroach approximately 8 feet into the required Landscape Buffer Area (LBA) along the west property line will not adversely affect adjacent property owners because that property owner, Thomas Jefferson Unitarian Church, is a party to the settlement agreement and has endorsed the proposed RDDDP, including the west property line setbacks, screening and buffering, and where the church was interested in a brick wall and landscaping along this line, this has been provided; and because, in this regard, terms of the settlement Agreement include a variable elevation brick screening wall along the west property line, which the Thomas Jefferson Unitarian Church helped to design; and further landscaping will be on the Thomas Jefferson Unitarian Church side of the screening wall; and because the church will also have use of the parking structures at the subject property for its annual art fair; and

WHEREAS, The requested waivers will not adversely affect adjacent property owners as the required buffer and related vegetation between the zones in question relate to the interior of this site only and the area between C-1 and R-4

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is proposed to be screened by a variable elevation brick wall and landscaping; the waivers will not violate specific guidelines of Cornerstone 2020 as the intent of the comprehensive plan regarding landscape buffers is to provide standards for screening and buffering to mitigate adjacent incompatible uses. This case relates to only one use on one site, therefore there is nothing that needs to be screened or buffered within the site itself and the C-1 to R-4 area is proposed to have alternative screening and buffering measures in place; the extent of the waiver is the minimum necessary to afford relief to the applicant as the waivers are requested for internal buffering between zones on the same lot that cannot be provided if the site is to be developed and the C-1 to R-4 area is proposed to have alternative screening and buffering measures in place; the strict application of this regulation would deprive the applicant of reasonable use of the land and create an unnecessary hardship as internal buffers would essentially sub-divide this lot to create portions of unusable space and the C-1 to R-4 area would be rendered less usable when this area is proposing alternative screening and buffering; and

WHEREAS, the waiver request involves an internal plan detail that will not affect adjoining property owners; the condo buildings will provide private open space and there is public space at the entrance to the development along the retail frontage that provides outdoor seating and in the service of a mixed-use development that the condos are served by private courtyards and attractive public space is still provided for an overall appropriate and attractive landscaping/open space plan; now, therefore be it

RESOLVED, the Metro Louisville Planning Commission, that the waivers requested by the applicant (((1) to permit omission of the 15-foot LBA required between OR-3 and adjacent R-4 along a portion of the south property line in the area where the access drive is proposed and (2) to omit the LBA buffer along the internal zoning lines between the OR-3 and C-N zones and between the OR-3 and C-1 zones, as required by Section 10.2.4/A of the Land Development Code; (3) to permit more than 50 percent of the open space required to be provided as private open space, as required by Section 5.12.4.A of the Land Development Code; and (4) to permit reduction of the 25-foot buffer between C-1 and R-4 zones to 15 feet required by Section 5.3.2 of the Land Development Code, are hereby **APPROVED**.

**MINUTES OF THE PUBLIC REVIEW
HELD BY THE
LOUISVILLE METRO PLANNING COMMISSION**

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The vote was as follows:

YES: Commissioners Ernst, Carlson, Adams, Jones, Howard, Hamilton, Blake, Queenan, and Wells-Hatfield.

NO: No one.

NOT PRESENT: Commissioner Abstain.

ABSTAINING: No one.