

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
September 17, 2020**

A meeting of the Louisville Metro Planning Commission was held on September 17, 2020 at 1:00 p.m. via Cisco Webex Video Teleconferencing. On the recommendation of the Louisville Metro Department of Health and Wellness regarding congregate events and social distancing, the special Planning Commission meeting set for today was held online.

**Commission members present:**

Marilyn Lewis, Vice Chair  
Jeff Brown – Left at ~5:22 p.m.  
Lula Howard  
Ruth Daniels  
Jim Mims  
Pat Seitz

**Commission members absent:**

Vince Jarboe, Chair  
Rich Carlson  
Robert Peterson

**Staff Members present:**

Joe Reverman, Planning and Design Assistant Director  
Brian Davis, Planning and Design Manager  
Julia Williams, Planning Supervisor  
Dante St. Germain, Planner II  
Lacey Gabbard, Planner I  
Jay Lockett, Planner I  
Beth Stuber, Transportation Planning  
Laura Ferguson, Legal Counsel  
Pamela M. Brashear, Management Assistant

The following matters were considered:

**PLANNING COMMISSION MINUTES**  
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**APPROVAL OF MINUTES**

**SEPTEMBER 2, 2020 DEVELOPMENT REVIEW COMMITTEE REGULAR MEETING MINUTES**

On a motion by Commissioner Seitz, seconded by Commissioner Mims, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on September 3, 2020.

**The vote was as follows:**

**YES: Commissioners Mims, Seitz and Lewis**

**NOT PRESENT FOR THIS CASE: Commissioners Carlson, Peterson and Jarboe**

**ABSTAINING: Commissioners Brown, Daniels and Howard**

**SEPTEMBER 3, 2020 PLANNING COMMISSION REGULAR MEETING MINUTES**

On a motion by Commissioner Howard, seconded by Commissioner Daniels, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on September 3, 2020.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT FOR THIS CASE: Commissioners Carlson, Peterson and Jarboe**

**ABSTAINING: Commissioner Brown**

**PLANNING COMMISSION MINUTES**  
**September 17, 2020**

**BUSINESS SESSION**  
**20-AMEND-0005**

Request: Modification of Binding Element  
Project Name: Signature Point  
Location: 1111 Rose Hill Lane  
Owner: Clayton Property Group Inc  
Applicant: Elite Homes  
Representative: Land Design and Development  
Jurisdiction: Louisville Metro  
Council District: 20 – Stuart Benson  
Case Manager: Jay Lockett, AICP, Planner I

**NOTE: COMMISSIONER MIMS RECUSED HIMSELF**

**Discussion**

00:14:06 Mr. Lockett said there was a question about the language of the binding element dealing with who would maintain the fence. The applicant sent an email clarifying that issue. The language will be copied from the previous binding element number 16 as follows: The developer shall, at its expense, construct a 6-foot chain link fence with black vinyl coating as shown on the fencing exhibit presented at the September 16, 2020 Development Review Committee, DRC, meeting.

00:16:28 Acting Chair Lewis asked Mr. Lockett to give more explanation of the fence location and the purpose of the binding element.

00:16:30 Mr. Lockett explained the fence height (6 feet) and location.

**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.**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the modification of the binding element as follows: The developer shall, at its expense, construct a 6-foot chain link fence with black vinyl coating as depicted on the fencing exhibit presented at the September 16, 2020 Development Review Committee meeting. The fence shall be perpetually maintained by the developer or its successor (Condominium Council, Homeowners Association, etc.).

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Seitz and Lewis**

**PLANNING COMMISSION MINUTES**  
**September 17, 2020**

**BUSINESS SESSION**  
**20-AMEND-0005**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson, Mims, Peterson and Jarboe**

**PLANNING COMMISSION MINUTES**  
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**PUBLIC HEARING**  
**NIGHT HEARING PROCEDURES**

Project Name: Night Hearing Procedures  
Case Manager: Brian Davis, AICP, Planning & Design Manager

**Discussion**

00:21:16 Mr. Davis discussed the policies designed to help conduct night hearings during this state of emergency. Currently, in the Procedures and By-laws, there's no language for this. It has been discussed at DRC for at least 6 weeks.

00:33:02 Councilwoman Fowler stated she has some issues with the document and changes but will figure out a way to address it at the Metro Council level. The main concern is that everyone's voice is heard.

00:35:40 Commissioner Mims stated there must be some form of compromise Councilwoman Fowler could offer which would still allow the larger projects to move forward.

00:36:48 Ms. Ferguson, legal counsel, stated the Planning Commission will be making a recommendation to Metro Council, so changes could be made. Mr. Davis said it does not to go Metro Council, Planning Commission has the final say. Ms. Ferguson clarified, it is a Planning Commission action and night hearings are also under 153, so if there's a change at the ordinance level, it would go to Metro Council.

**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.**

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the By-Laws recommended by the Policies and Procedures Committee concerning Night Hearing Procedures.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Mims, Seitz and Lewis**  
**NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe**

**PLANNING COMMISSION MINUTES**  
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**PUBLIC HEARING**

**CASE NO. 20-ZONE-0034**

Request: Change in form district from NFD to SMCFD, change in zoning from R-4 to C-1, with Detailed District Development Plan and Binding Elements – NIGHT HEARING REQUEST

Project Name: RaceTrac

Location: 11800 – 11908 East Orell Road, 11705 Dixie Highway

Owner: Herman and Karl Gohl, Catherine and Charles Grissett, Kathy Gibson

Applicant: RaceTrac Petroleum Inc.

Representative: Dinsmore & Shohl

Jurisdiction: Louisville Metro

Council District: 14 – Cindi Fowler

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

**Agency Testimony:**

00:44:11 Ms. St. Germain stated she received a request from the applicant yesterday to not set the night hearing at this time. When the applicant decides to move forward with the request again, it will go back to Land Development and Transportation LD&T to set the night hearing. Acting Chair Lewis asked if it's to be set to a date uncertain. Ms. St. Germain said yes.

**The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, 101 South 5<sup>th</sup> Street, Louisville, Ky. 40202

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

00:46:16 Mr. Ashburner said he would prefer to set this case for LD&T, 3 weeks from now in the hope that by that time, Metro Council will make a determination regarding the night hearings. Also, it will give time to put technology solutions in place (if needed). Commissioner Mims said he's not sure there is a plan for resolving technology issues with the Planning Commission. Mr. Ashburner said he's heard a lot of community concern about access to a night hearing and wants to make sure everyone who wants to comment and participate, or as many as reasonable, will have that opportunity.

00:49:47 Commissioner Brown asked Mr. Ashburner if he will be submitting any new material (noise study) between now and the LD&T meeting. Mr. Ashburner said no because the noise study has already been submitted to staff. There may be a different rendering, but the plan will remain the same. Mr. Ashburner said he now requests to continue this case to the October 15, 2020 Planning Commission meeting.

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**PUBLIC HEARING**

**CASE NO. 20-ZONE-0034**

**The following spoke neither for or against this request:**

James Jones, 6326 \_\_\_\_\_, Louisville, Ky. 40272

**Summary of testimony of those neither for nor against:**

00:53:49      Mr. Jones agrees with Mr. Ashburner.

00:54:27      Planning Commission deliberation.

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

**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.**

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the October 15, 2020 Planning Commission meeting to set a night hearing date.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe**

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**PUBLIC HEARING**

**CASE NO. 17ZONE1030**

Request: Change in zoning from R-4 to R-6 with a Variance, Waiver and Detailed District Development Plan  
Project Name: Chathamwood Apartment Homes  
Location: 5200, 5204, 5208 Chathamwood Court  
Owner: Chathamwood LLC  
Applicant: Chathamwood LLC  
Representative: Bluestone Engineers PLLC  
Jurisdiction: Louisville Metro  
Council District: 23- James Peden  
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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:56:00 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

01:05:58 Commissioner Brown asked Ms. Williams if the applicant treating the first full inch of rainwater is mitigation for encroachment of the building and parking lot into the stream buffer. Ms. Williams said she does not consider that mitigation. Commissioner Mims asked if MSD has any issues. Ms. Williams said MSD is ok with the pre-treatment of the first inch. It was offered by the applicant, not required by MSD. MSD requires a 25-foot buffer but the Land Development Code, LDC, requires the 100-foot buffer.

01:08:02 Acting Chair Lewis asked if the OR-2 and C-1 zoned areas are being used as residential lots. Ms. Williams said yes. How did they get those zoning classifications? Ms. Williams said in 1964 there was a master plan that showed those areas being office and commercial. Those sites have never been used for office or commercial use.

**The following spoke in favor of this request:**



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**CASE NO. 17ZONE1030**

Chris Crumpton, Bluestone Engineers, PLLC, 3703 Taylorsville Road, Suite 205,  
Louisville, Ky. 40220  
Kyle Galloway, 9625 Ormsby Station Road, Louisville, Ky. 40223

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

01:12:04 Mr. Crumpton gave a power point presentation. The proposed apartment complex fits in terms of diversity of housing styles. There's easy access to Preston Hwy. and the Gene Snyder Freeway. There's buffering on all sides and most will remain (will be enhanced). The proposal is for 24 apartment units, 2 bedroom, 2 bathrooms - \$875 to \$950 a month). The proposed parking is for 36 spaces (minimum).

Mr. Crumpton showed renderings of the apartments. The Charleswood Park property is very heavily treed and wraps around the property (east and south). Charleswood Rd. is 38-feet wide. The proposed site sits 8-10 feet lower than the adjacent homes.

01:24:16 Mr. Crumpton explained the variance and waiver requests.

01:28:25 Commissioner Mims asked if the park is a metro park. Who maintains it? Mr. Crumpton said the homeowners' association maintains it because it is not a metro park. The parcel is called Charleswood Park open space. Commissioner Mims asked if the development would contribute to the maintenance for that park. Mr. Crumpton said yes.

01:29:59 Mr. Galloway stated the variance request that the Objectives of Plan 2040 encourages housing diversity especially in the Neighborhood Form District.

**The following spoke in opposition to this request:**

Debora Pennington, 10405 Charleswood Road, Louisville, Ky. 40229  
Beverly Keeting, 5200 Capewood Drive, Louisville, Ky. 40229  
Joe Keeting, 5200 Capewood Drive, Louisville, Ky. 40229  
Mary Sue Carter, 10221 Closterwood Drive, Louisville, Ky. 40229  
Deanna K. Spencen, 10210 Charleswood Road, Louisville, Ky. 40229

**Summary of testimony of those in opposition:**

01:32:00 Ms. Pennington said traffic is a concern as several places and people use Charleswood Rd. Safety and parking are issues as well. There has been flooding at Fish Pool Creek during torrential rains. The proposed development is out of character with the neighborhood and property values will decrease. Also, turning from Cooper

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Chapel Rd. onto Charleswood Rd. is not 38-feet wide. If this is approved, the applicant needs to consider speed humps on Charleswood Rd. There is no park, just woods.

01:37:10 Ms. Keeting said traffic and access to Charleswood are issues. It's scary trying to get in and out. The speed limit is 25 miles per hour, but everyone speeds. Twenty-four apartments are too many and there will not just be 1 vehicle per household.

01:39:41 Mr. Keeting lives on the edge of the proposed apartments. There is no park. The space has been maintained by 2-3 resident since 1966.

Mr. Keeting said he was told once the sewer treatment plant was demolished, it would be zoned for 2 or 3 houses, not 24 apartments. The parking is not efficient as there will be 2-3 vehicles per unit.

01:47:40 Ms. Carter stated she finally got speed humps on her street after 3 years. There are a lot of people cutting through and driving at great speeds. Has there been a study concerning the square footage and acreage of the apartments versus the acreage of the Glenmary development also where it sits on Bardstown (in middle of development)?

Ms. Carter said there is no Charleswood park. There are too many encroachments, variances and waivers. The proposal doesn't fit.

01:54:13 Ms. Spencen said the apartments will be in her back yard. Traffic will be a nightmare. The fire dept. has not approved apartments.

**Rebuttal**

01:57:05 Mr. Galloway said Public Works has no issues with traffic or parking. A mixed-use is not unusual and is encouraged in the Land Development Code. Also, MSD has signed off on the flood plan.

01:59:28 Mr. Crumpton said he did not mean to call the property around the site a park but it is actually termed Charleswood Community Park on the plat. The road is 38 feet wide and that's probably why people attempt to speed.

02:00:53 Commissioner Howard asked if there's a reason why you can't build 3 single family homes on the 3 lots. Mr. Galloway said the applicant decided to put in apartments because it's more financially feasible.

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02:01:49 Acting Chair Lewis asked, what is the mitigation for the variance on the 100-foot stream buffer? Mr. Crumpton said they will collect the storm water runoff from the developed site and run it into a water quality unit (1-inch rainstorm event). Mr. Galloway added, it's more than what MSD requires.

02:05:16 Commissioner Daniels asked if the fire dept. was contacted about this development. Mr. Crumpton said yes, but there were no comments. Ms. Williams added, the fire dept. had no comment except requiring a fire hydrant.

**Deliberation**

02:10:00 Commissioner Brown agrees with the staff regarding the stream buffer encroachment. The area can support the density. There are traffic issues in the area.

02:10:41 Commissioner Howard stated she agrees with the Standard of Review and Analysis for the variance and the development plan. Diversity of housing options in an area are acceptable, but the proposal is an overbuild of the site to require a 75-foot variance. The existing 3 lots for single family use would better serve this site.

The other commissioners agree.

**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 Change from R-4 to R-6**

On a motion by Commissioner Howard, seconded by Commissioner Brown, the following resolution based on the Standard of Review and Staff Analysis for the variance and the testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed high-density zoning that is not located near transportation facilities, employment centers, or an existing activity center. However, there is OR and C-1 zoning located nearby that could potentially be developed non-residentially and become an activity center; the landscape buffers are provided where the site is adjacent to residential zoning. With the exception to the west, the site is surrounded by open space lots; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, soils are not an issue with the development; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the site has no historic or cultural value; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the area has mixed zoning in the vicinity, therefore access to the development will not be through significantly lower density/intensity of development; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, Transportation Planning has not indicated that the proposal will have a negative effect on the surrounding transportation network; Transportation Planning has not indicated a need for roadway improvements; The proposal does not have direct residential access to high speed roadways; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, existing utilities serve the area; an adequate water supply is available to the site; MSD has not indicated that sewage treatment will be an issue; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the site is preserving trees along the south property line near the existing creek;

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, this proposal adds to the diversity of housing options in this area, which is dominated by single family housing; this proposal adds to the diversity of housing options in this area, which is dominated by single family housing. It is not identified for a specific user; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, this proposal adds to the diversity of housing options in this area, which is dominated by single family housing. It is not identified for a specific user; the proposed housing is not located in a multi-modal transportation area or employment center. The proposal is located close to office and commercial zoning (residential use) that could be an activity center in the future; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, this proposal adds to the diversity of housing options in this area, which is dominated by single family housing; the site is vacant and will not displace residents.

**Variance from Chapter 4.8.3.C to reduce the 100' stream buffer to 25' (75' Variance) 20- VARIANCE-0041**

**WHEREAS**, the variance will adversely affect the public health, safety or welfare because the required buffer is intended to preserve and enhance the biological, hydrological and ecological functions of the creek. To protect natural areas and features, minimize water pollution, and to locate development in areas that do not have severe environmental limitations; and

**WHEREAS**, the requested variance will alter the essential character of the general vicinity because the site is surrounded by open space lots within subdivisions. The proposed lot was intended as a sewage treatment site with very little impact on the surrounding landscape; and

**WHEREAS**, the requested variance will cause a hazard or nuisance to the public because the full buffer for the creek is not being mitigated; and

**WHEREAS**, the requested variance will allow an unreasonable circumvention of the zoning regulations because the encroachments into the buffer are not being mitigated; and

**WHEREAS**, the requested variance does not arise from any special circumstances. The applicant is encroaching with building and pavement in almost the entirety of the middle and outer stream buffers; and

**WHEREAS**, the strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant because the site is not undevelopable under the existing zoning and associated regulations; and

**WHEREAS**, 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 seeking additional development on the site for which it is not zoned, causing the encroachments into the buffers; and

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**WHEREAS**, the stream buffer requirements do not represent an extreme hardship that there would be minimal or no economic use of the property because the site could be developed under the current zoning; and

**WHEREAS**, it is possible to construct a single-family dwelling without encroachments into the stream buffer; and

**WHEREAS**, encroachment into the required Buffer Area is limited to the minimum necessary to accommodate the proposed use once the zoning has changed on the property. Without the change in zoning the encroachments are not necessary; and

**WHEREAS**, the applicant has not offered any mitigation measures to offset the impacts of the encroachments other than treating the first 1" of rainwater prior to it entering Fishpool Creek; and

**WHEREAS**, the Louisville Metro Planning Commission finds MSD has not indicated a reduction in water quality as the 25' MSD streamside buffer is in compliance with their standards.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to Metro Council the change in zoning from R-4, Single Family Residential to R-6, Multi-family Residential on property described in the attached legal description be **DENIED**.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims and Seitz**

**NO: Commissioner Brown and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe**

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**PUBLIC HEARING**

**CASE NO. 20-DDP-0040**

Request: Revised District Development Plan with Binding Element Amendments  
Project Name: Norton Audobon Medical Office  
Location: 3101 Poplar Level Road  
Owner: Andrew M. McCarthy, J.D.  
Applicant: Andrew M. McCarthy, J.D.  
Representative: Chris Brown, AICP, BTM Engineering Inc.  
Jurisdiction: Louisville Metro  
Council District: 10 – Pat Mulvihill  
Case Manager: Lacey Gabbard, AICP, Planner I

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.)

**Agency Testimony:**

02:17:22 Ms. Gabbard discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Chris Brown, BTM Engineering, Inc., 3001 Taylor Springs Drive, Louisville, Ky. 40220

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

02:24:48 Mr. Brown gave a power point presentation. The proposed plan will change the use from grocery store to medical office complex. Binding element (15 and 16) related to the use is required to be approved by Metro Council. The building façade will change.

02:37:21 Commissioner Brown asked if they're removing the pedestrian connection to Audubon Plaza Dr. Mr. Chris Brown said they're removing a small piece of sidewalk at the rear behind the dumpster that goes out to Illinois Ave. Pedestrians coming into the site will still be accommodated. Commissioner Brown said there is no connection being proposed to Audubon Plaza Dr. Mr. Chris Brown said there's a sidewalk on the western portion that comes out on the east side of the parking garage to Audubon Plaza Dr. Commissioner Brown asked if there's an easement. Mr. Chris Brown said he would have to check on it. Commissioner Brown said there are 3 different property owners and he wouldn't consider approving this case without knowing if an easement exists or not. It must meet the requirements of the Land Development Code, LDC.

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02:45:24 Ms. Ferguson stated, it looks like on the plan to the left, that the section that leads out to Audubon Plaza Dr. is also subject to a variable width private access easement. Commissioner Brown said there's no guarantee that sidewalk will always be there for future connectivity. Mr. Chris Brown said the sidewalk in the Woodland Protection Area, WPA will remain and it's not encouraging or directing pedestrian traffic in a defined way into the rear of the site. Commissioner Brown stated the LDC requires that you provide ADA compliant pedestrian connection to all the abutting public roadways.

02:56:20 Mr. Chris Brown stated, regarding the existing sidewalk to be removed, some of the remaining portion will cut across and there is a walkway shown along the parking island and goes to the front entry point.

02:57:46 Mr. Chris Brown said this issue did not come up (with any agencies) during the review of the development plan. Commissioner Brown said if they eliminate the proposed parking and the sidewalk removal, the plan will be in order.

**Deliberation**

03:02:42 The commissioners are in agreement that this case is a good change of use and don't want it held up. The easement needs to be put in place.

**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.**

03:24:11

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that Binding Element Amendments 1, 3, 6a-e, 7a-c, 15 and 16 be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe**



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**CASE NO. 20-DDP-0040**

**Revised District Development Plan and Binding Elements**

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution was adopted.

**WHEREAS**, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. Public Works and MSD have provided preliminary approvals; and

**WHEREAS**, there are no Outdoor Amenity Area requirements with this proposal; and

**WHEREAS**, 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 Louisville Metro Planning Commission finds, 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 will meet all required setbacks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan and Binding Element Amendments to numbers 4, 5, 9, 10, 18 and 24, **ON CONDITION** that it meets the pedestrian access requirements as specified in the Land Development Code and **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

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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 authorized Committee thereof; any changes/additions/alterations not so referred shall not be valid.

2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - f. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - g. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - h. 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.
  - i. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
  - j. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

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7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors, an assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and Metro Council approval.
9. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed of restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:
  - (c) Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which all existing vegetation shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat, except that the gazebo required by these binding elements may be constructed within the WPA and a walking path may be installed in the WPA in a location agreeable to the applicant and approved by Planning and Design Services staff.
  - (d) Dimension lines have been used on this plan to establish the general location of WPAs and represent the minimum boundary of the designated WPAs. The final boundary for each WPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
10. The materials and design of proposed structures shall be substantially the same as depicted in the renderings as presented at the February 17, 2005 and March 17, 2005 Planning Commission meetings. The materials and design of the

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proposed grocery shall be masonry and designed to have the appearance of brick similar to that of the grocery located on Thierman Lane in St Matthews. This binding element may be amended only with the approval of Metro Council.

11. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval. This binding element may be amended only with the approval of Metro Council.
12. No overnight idling of trucks shall be permitted on site. This binding element may be amended only with the approval of Metro Council.
13. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
14. Skylights. The roof of the building shall have no skylights.
15. Outdoor activity. No loading, trash pickup (i.e. dumpster loading and unloading, pallet or trash removal from the site), trash compacting audible beyond the property line, outdoor construction or maintenance, parking lot cleaning or sweeping (except snow and ice), shall occur on the property between the hours of 7 PM and 7 AM. This binding element may be amended only with the approval of Metro Council.
16. Deliveries. No deliveries shall be made to or on the site or drive-thru window operation shall be made between the hours of 10 PM and 6 AM.
17. Delivery Truck Parking On-Site. No delivery trucks with lights, engines, refrigerator motors or similar equipment in operation shall be allowed to park on the property between the hours of 10 PM and 7 AM. The property owner or store operator shall post signs to this effect. This binding element may be amended only with the approval of Metro Council.
18. Alarms. Provided no applicable law or regulation otherwise requires, no security alarms, sirens or bells shall be located on the exterior of the building. However, it is permissible for an alarm system to be operated in conjunction with exit doors.
19. No blasting shall occur on the site unless approved by the Land Development and Transportation Committee after notice to those individuals who spoke at the public hearing. This binding element may be amended only with the approval of Metro Council.

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20. Prior to commencing site disturbance work the developer shall contract with an archaeologist to perform an archaeological survey report and shall provide a copy of the survey report to the Urban Design Division (“Landmarks”) of Louisville Metro Planning and Design Services. Within thirty days following delivery of the survey report to Landmarks, the developer and Landmarks shall meet to review the findings of the survey report and to agree upon what action, if any, should be taken. This binding element may be amended only with the approval of Metro Council.
  
21. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan. All plans setting out tree preservation areas must contain the following notes:
  6. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.
  7. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
  8. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both TPAs and WPA, fencing shall only be required at the outer most perimeter of that tree mass.
  9. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
  10. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any

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proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.

22. First flush stormwater runoff for the site is to be funneled into storm ceptors, settling/retention basins, and/or oil/water separators as needed so that grit, oil, gas, antifreeze, and other potential toxic substances are captured before entering the detention basin. MSD is to approve both the details of capturing the first flush material and the details of the maintenance plan for the ceptors, basins, and/or oil/water separators. The property owner is responsible for proper maintenance of the storm ceptors, basins, and/or oil/water separators as per MSD's approved maintenance plan and is to provide MSD with documentation of such maintenance ensuring that the maintenance plan is properly followed.
23. Prior to issuance of a construction permit the developer shall obtain approval of the development plan from the U.S. Army Corps of Engineers. 24. Access from Audobon Plaza Drive shall be designed so as to restrict access by delivery trucks, which design shall initially include placement of bollards at appropriate locations. The Planning Commissioner shall have the right to require additional restrictions at a later date should the placement of bollards be unsuccessful in restricting delivery truck access. This binding element may be amended only with the approval of Metro Council. 25. Exterior improvements to the VFW building shall be made similar to those presented at the March 17, 2005 public hearing so as to integrate its design with the design of the proposed structures in the center.
26. Although the approved Development Plan indicates an on-site detention basin, the developer agrees to continue to pursue the concept of an off-site basin or downstream improvement suitable to MSD, with the intent of balancing the issues of tree preservation and acceptable stormwater management.
27. The design of the fencing along the easterly portion of the property shall be presented at the March 17, 2005 public hearing. In addition, the landscaping along the fencing shall be evergreens at least 6 feet in height and irrigation shall be installed in connection with the landscaping. This binding element may be amended only with the approval of Metro Council.
28. The developer/applicant/property owner shall plant large shade trees on the subject property approximately 50 feet on center along the entire Poplar Level Road frontage. Said trees shall be a minimum 3 inches in caliper at time of planting. A landscape plan that conforms to this binding element and Chapter 10 of the LDC shall be approved by Planning and Design Services staff prior to

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requesting any permits, in accordance with Binding Element No. 9. This binding element may be amended only with the approval of Metro Council.

29. The developer/applicant/property owner shall install a "Bright Side" on Poplar Level Road somewhere along the frontage of the subject property if approved by the State Highway Department. This binding element may be amended only with the approval of Metro Council.
30. The developer/applicant/property owner shall donate the property within the designated Woodland Protection Area along Illinois Avenue to Metro Government at such time as Metro Government indicates that it will accept the donation. This binding element may be amended only with the approval of Metro Council.
31. The developer/applicant/property owner shall construct/install a gazebo on the northeast portion of the site along Illinois Avenue similar in size to the gazebo at Willow Park; the cost of said gazebo is not required to exceed \$5,000. The exact location of the gazebo shall be approved by Planning and Design Services staff. This binding element may be amended only with the approval of Metro Council.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson, Peterson and Jarboe**

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**CASE NO. 20-ZONE-0055**

Request: Change in Zoning from EZ-1 to C-2 and Conditional Use Permit for blood/plasma collection center with detailed plan  
Project Name: Octapharma  
Location: 2809 West Broadway  
Owner: Elda KY LV, LLC  
Applicant: Octapharma Plasma, Inc.  
Representative: Bardenwerper, Talbott and Roberts, PLLC  
Jurisdiction: Louisville Metro  
Council District: 5 – Donna Purvis  
Case Manager: Joel P. Dock, 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

03:40:19 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Paul Whitty, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Suite 200, Louisville, Ky. 40223  
Kerry Clish, 10644 West Lake Drive, Charolette, North Carolina 28273

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

03:47:43 Mr. Whitty gave a power point presentation.

Mr. Whitty stated this use is essential to the health and welfare of the public, particularly at this time during the pandemic. Plasma technology is essential in that endeavor. The use is appropriate for the location. All requests by Public Works will be provided.

03:49:53 Mr. Whitty said a question was raised at the LD&T meeting regarding Commissioner Daniels not receiving notification for this case. Her residence was 9 lots



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and over 1300 feet away. We did provide notification to residential properties within 1000 feet.

03:52:07 Mr. Whitty stated there's ample parking for all the uses proposed on site. The proposal is strictly for a plasma center and not blood donation.

03:55:25 Mr. Clish said Octapharma is a U.S. based company that collects blood plasma and sends it to the parent company overseas and they make medicines to be shipped globally (over 120 countries). Octapharma creates jobs for the community – local hiring fair. People who donate plasma will be paid with a debit card (no cash). Octapharma supports community events (at least 1).

04:10:10 Mr. Whitty stated it's a good location for this use but there is a Conditional Use Permit, CUP requirement for the 1000 foot rule, however that rule is directed toward the blood collection centers and labor pools which may attract vagrants, alcoholics and drug users trying to get a quick dollar. The proposed plasma center will have a strict screening process to deter those people. The Octapharma is in shopping centers and major commercial corridors across the country with adjacent residential properties. This makes it highly susceptible to the 1000-foot rule.

04:12:47 Commissioner Mims asked why blood plasma centers are conditionally approved. Why not remove it from the LDC? Mr. Dock said he doesn't know why it was added into the LDC.

04:14:48 Commissioner Mims stated it seems like a lot of the plasma centers are disproportionately located in low income African American neighborhoods. Commissioner Howard answered, most of those are blood donation centers (not plasma).

**NOTE: COMMISSIONER BROWN LEFT ~ 5:22 AND DID NOT VOTE ON THIS CASE**

**Deliberation**

04:16:37 Commissioner Seitz said there will be more plasma centers in the future. It's a good plan and will enhance the area.

04:17:09 Commissioner Mims said plans to improve the parking lot would be welcome. It's a good plan.

04:17:54 Commissioner Howard said the proposal is a good use for the area and should be an economical boost.

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04:18:28 Commissioner Daniels said she now understands the difference between a blood and plasma donation center. Also, that shopping center is not vacant. It's just the empty one for this proposal. It should be good for the neighborhood.

04:19:47 Acting Chair Lewis agrees with the other commissioners. The proposal is appropriate and should be successful.

04:20:46 Coming out of deliberation regarding adding landscaping to the parking lot and improving pavement markings. Mr. Dock said a landscape plan is not required. Commissioner Mims asked if it's in compliance with the original approved landscape plan? Mr. Dock said he will check into it. Mr. Whitty said they are a tenant, don't own the property and never had an obligation to install landscaping. As a tenant, we are obligated to make improvements to the curb-cut. An additional imposition of expense would not be fair to the applicant. Ms. Williams found a landscape plan for a site at 28<sup>th</sup> and Broadway, which was a Winn Dixie Market. Landscape plans don't expire so it can be pulled from archives and have enforcement look into it and make sure it's in compliance. Commissioner Howard suggests adding a binding element. Mr. Reverman suggests adding that the plan be revised, if necessary, to show internal landscape areas, ILAs or landscape buffer areas, LBAs or whatever is required. Mr. Dock replied, it will be the landscaping coming into compliance with a previously approved plan. A time frame will be set for possibly within 12 months of final action by Louisville Metro Council. Commissioner Mims and Mr. Whitty agree.

**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 Change from EZ-1 to C-2**

On a motion by Commissioner Mims, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis, testimony heard today and the Applicant's Finding of Fact was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal is in an existing higher intensity zoning district and does not result in an expansion into a residential area; the proposal is located along W. Broadway, which is a major transportation and transit corridor, and contains employment centers where demand and adequate infrastructure exists; the current property is not industrially developed at this time and is located in a mixed intensity area where commercial districts are appropriate; the proposal eliminates many potentially hazardous or nuisance uses from

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the development site in a manner consistent with the mix of intensities along the corridor; the proposal eliminates many potentially hazardous or nuisance uses, including those uses that produce noxious odors, particulates and emissions (M zoning district uses) from the development site in a manner consistent with the mix of intensities along the corridor; infrastructure is sufficient to support a variety of traffic conditions without impacting nearby communities; the proposal eliminates many uses producing large volumes of noise (M zoning district uses) from the development site in a manner consistent with the mix of intensities along the corridor; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the existing commercial corridor supports a variety of intensities and densities. The site development is existing and does not impact the current character of the area. The district is currently permitted within the existing district as well; Retail commercial as is currently present is supported by sufficient population; conditions of the site are existing and do not alter the existing compatibility of the development or the compatibility of the district; the Broadway mixed use corridor contains a wide range of uses that to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place; the proposed district does not hinder the ability for the site to be redeveloped and provide for residential uses in activity centers; the commercial development in the current industrial-hybrid district provides for continued commercial uses on the subject property; out lot development is encouraged for future development of the center to bring uses closer to the pedestrian on Broadway; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposal is in the TMC and supports commercial growth and employment, as well as transit-oriented development and an efficient public transportation system; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal eliminates many non-neighborhood serving uses from the development site, such as those uses permitted in

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the M zones; the proposed district is consistent with uses along the corridor in terms of the impact on mobility; improvements will be made as required and made necessary by the development, including curb/access work along 29th Street; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the development is served by existing utilities; an adequate supply of potable water and water for fire-fighting purposes appears to be available; an adequate means of sewage treatment and disposal to protect public health and to protect water quality will be provide or is currently available; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the removal of industrial operation at this location does not diminish available land for industry in industrial subdivisions; the proposed district is consistent with uses along the corridor in terms of the impact on mobility; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity; the proposal eliminates many potentially hazardous or nuisance uses, including those uses that produce noxious odors, particulates and emissions (M zoning district uses) from the development site in a manner consistent with the mix of intensities along the corridor.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from Enterprise Zone, EZ-1 to Commercial, C-2 on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

**Conditional Use Permit for Blood/Plasma Collection Center (Land Development Code 4.2.10) with relief from 'A' to allow the center to be located within 1,000 feet of a residential zone**

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On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the proposal is consistent with the Comprehensive Plan. The Broadway mixed use corridor contains a wide range of uses that reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel. The proposal will be encompassed by existing uses within a higher intensity district; and

**WHEREAS**, the proposal is compatible with surrounding uses and the general character of the form district as the site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity; and

**WHEREAS**, the Louisville Metro Planning Commission finds, necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

**WHEREAS**, the Louisville Metro Planning Commission further finds LDC 4.2.10 provides:

A Blood/Plasma Collection Center may be allowed within the C-2, C-3, C-M and all form districts except the Neighborhood, Village and Traditional Neighborhood Form Districts upon the granting of a conditional use permit and compliance with the listed requirements.

A. The property proposed for a blood/plasma collection center shall be at least 1,000 feet from a property zoned residential.

B. One parking space per 300 square feet of gross floor area shall be provided. The property is within 1,000 feet of a residential zoning district. The general area contains a mixture of intensities, including commercial and industrial operations fronting W. Broadway. Residential development is located to east of the development site and to the rear of non-residential uses along W. Broadway. A public park adjoins the rear of the property. The use is in an area of the site/building that is located immediately abutting higher intensities uses along 29th Street, as well as an existing health/medical user.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** a Conditional Use Permit for Blood/Plasma Collection Center (Land Development Code 4.2.10) with relief from 'A' to allow the center to be located within 1,000 feet of a residential zone.

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**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

**Detailed District Development Plan and Binding Elements**

On a motion by Commissioner Mims, seconded by Commissioner Daniels, the following resolution based on the testimony heard today was adopted.

**WHEREAS**, the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. The site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the subject property is served by existing transportation and transit infrastructure along a major arterial roadway; and

**WHEREAS**, the site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity. No open space is required of this proposal; and

**WHEREAS**, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 Louisville Metro Planning Commission finds, setbacks, lot dimensions and building heights are compatible with the existing and projected future development of the area as conditions of the building and site will be maintained; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan and land Development Code. The site is built-out. No natural, cultural, or environmental features appear to be present that adversely impact development or the immediate vicinity. All necessary improvements to public infrastructure required by this development will be made, including curb/access improvements on 29th Street.

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
3. 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.
4. 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.
5. The development site shall be brought into compliance with the approved landscape plan, if any, within 12 months of final action on the rezoning by Louisville Metro Council.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

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**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson  
and Jarboe**



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**CASE NO. 20-ZONE-0064**

Request: Change in Zoning from R-5 to C-2 and Change in form from Neighborhood to Suburban Marketplace Corridor  
Project Name: Coats Auto  
Location: 5210 Preston Highway  
Owner: Coats Properties I, LLC & Coats Properties II, LLC  
Applicant: Lockett & Farley  
Representative: Dinsmore & Shohl, LLP  
Jurisdiction: Louisville Metro  
Council District: 21 – Nicole George  
Case Manager: Joel P. Dock, 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

04:34:16 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, LLP, 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, Ky. 40202

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

04:39:26 Mr. Ashburner gave a power point presentation. This is a simple expansion of a business on Preston Hwy. All the homes have bridges that go across the creek. There are no variances or waivers being requested. The owner is dedicating a sewer easement to allow for drainage going from the subject property to the drainage ditch along Norton Ave. All the access will be from Preston.

**Deliberation**

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04:43:55      Planning Commission deliberation.

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

**Change-in-Form from Neighborhood to Suburban Marketplace Corridor**

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed expansion into a residential zoning district does not result in the displacement of residents or involve access to residential roadways. All transitions will be provided and no residents will be displaced as a result of this change in zoning; the proposal is located along a major arterial roadway with TARC service, and in area with adequate infrastructure; the proposed district is located along a major arterial roadway and does not have access through lower classification roadways; the proposal does not significantly modify the existing presence of noise from the roadway corridor or the automobile service use. No outdoor repair or storage is permitted within the C-2 district; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed district expands an existing district along a commercial corridor and concentrates those intensities along the corridor; the subject property is located along an activity corridor and sufficient population is available to support a wide range of uses permitted within the district; the proposed zoning district efficiently uses the land as it does not result in the displacement of residents and occupies previously undeveloped land along commercial corridor; the subject property is located along an activity corridor. TARC service and sidewalks are available; commercial, office and/or residential uses are permitted within the district which is located along an activity corridor; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the Louisville MSD has approved the preliminary development plan in this case satisfying requirements for drainage systems. No substantial changes to the topography or environmental degradation resulting from disturbance of natural systems appears to result; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no structures are proposed for removal; no distinctive cultural features including landscapes, natural elements and built features are apparent; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed higher intensity use will be located with the marketplace corridor that is served by public transit and a pedestrian network; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed higher intensity use will be located with the marketplace corridor that is served by public transit and a pedestrian network; the site has two access points to Preston Highway. It would not appear that additional modification to access are necessary; all improvements required of the developer within the public right-of-way will be made; Sidewalks and TARC service are available. Facilities and services are adequate to serve the use; all improvements required of the developer within the public right-of-way will be made; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the proposed development is in an area of existing development. Utilities would appear to be available; the development would appear to have an adequate supply of potable water and water for fire-fighting purposes; the development has adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposal is located along a major arterial roadway with TARC service, in area of employment, and within proximity to infrastructure (highway and airport); and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the Louisville MSD has approved the preliminary development plan in this case satisfying requirements for drainage systems. No substantial changes to the topography or environmental degradation resulting from disturbance of natural systems appears to result; the Louisville MSD has approved the preliminary development plan in this case satisfying requirements for drainage systems. No negative development impacts to the integrity of the regulatory floodplain appear to result.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby  
**RECOMMEND** to the Louisville Metro Council the change in Form District from

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**CASE NO. 20-ZONE-0064**

Neighborhood to Suburban Marketplace Corridor be on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

**Zoning Change from R-5 to C-2**

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed expansion into a residential zoning district does not result in the displacement of residents or involve access to residential roadways. All transitions will be provided and no residents will be displaced as a result of this change in zoning; the proposal is located along a major arterial roadway with TARC service, and in area with adequate infrastructure; the proposed district is located along a major arterial roadway and does not have access through lower classification roadways; the proposal does not significantly modify the existing presence of noise from the roadway corridor or the automobile service use. No outdoor repair or storage is permitted within the C-2 district; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed district expands an existing district along a commercial corridor and concentrates those intensities along the corridor; the subject property is located along an activity corridor and sufficient population is available to support a wide range of uses permitted within the district; the proposed zoning district efficiently uses the land as it does not result in the displacement of residents and occupies previously undeveloped land along commercial corridor; the subject property is located along an activity corridor. TARC service and sidewalks are available; commercial, office and/or residential uses are permitted within the district which is located along an activity corridor; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the Louisville MSD has approved the preliminary development plan in this case satisfying requirements for

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drainage systems. No substantial changes to the topography or environmental degradation resulting from disturbance of natural systems appears to result; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no structures are proposed for removal; no distinctive cultural features including landscapes, natural elements and built features are apparent; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed higher intensity use will be located with the marketplace corridor that is served by public transit and a pedestrian network; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed higher intensity use will be located with the marketplace corridor that is served by public transit and a pedestrian network; the site has two access points to Preston Highway. It would not appear that additional modification to access are necessary; all improvements required of the developer within the public right-of-way will be made; sidewalks and TARC service are available. Facilities and services are adequate to serve the use; All improvements required of the developer within the public right-of-way will be made; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the proposed development is in an area of existing development. Utilities would appear to be available; the development would appear to have an adequate supply of potable water and water for fire-fighting purposes; the development has adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposal is located along a major arterial roadway with TARC service, in area of employment, and within proximity to infrastructure (highway and airport); and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the Louisville MSD has approved the preliminary development plan in this case satisfying requirements for drainage systems. No substantial changes to the topography or environmental degradation resulting from disturbance of natural systems appears to result; the Louisville MSD has approved the preliminary development plan in this case satisfying requirements for drainage systems. No negative development impacts to the integrity of the regulatory floodplain appear to result.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to C-2, Commercial on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

**Revised Detailed District Development Plan and Binding Elements**

On a motion by Commissioner Howard, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis was adopted.

**WHEREAS**, the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be conserved as the site does not appear to adversely impact these features. All required tree canopy and planting/screening material will be provided. The site does not contain protected waterways or steep slopes; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided by existing infrastructure within the public right-of-way; and

**WHEREAS**, the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided as required landscape buffers have been provided; and

**WHEREAS**, 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 Louisville Metro Planning Commission finds, the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as architectural features are consistent with the

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character of the area and the existing structures on site, and form district requirements; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040 and the requirements of the Land Development Code.

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - 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 minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services
3. 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.
4. 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

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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.

5. 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.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**



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**PUBLIC HEARING**

**CASE NO. 20-ZONE-0006**

Request: Change in form district from NFD to SMCDFD, change in zoning from R-4 to C-1, with Detailed District Development Plan and Binding Elements

Project Name: Vogt Retail Development

Location: 4310 – 4318 Bardstown Road, 4403 – 4405 Fegenbush Lane

Owner: John and Joyce Vogt, Sterling Trust Company

Applicant: John and Joyce Vogt

Representative: Mindel Scott & Associates

Jurisdiction: Louisville Metro

Council District: 2 – Barbara Shanklin

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

**Agency Testimony:**

04:48:58 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

04:54:14 Ms. St. Germain said she received a proposed binding element (No. 11) from the applicant this morning and it's not in the commissioner packets. It reads as follows: Prior to building permit submission, the Developer shall prepare a Pedestrian Access/Crossing Plan for the Bardstown and Fegenbush Road Intersection, based on the two pedestrian crossing locations identified within Kentuckian Regional Planning and Development Agency (KIPDA) "Transit, Bicycle & Pedestrian" Focus Area provided through their Online Resource Center. The Plan shall include at a minimum, topographic information to ensure accessible slopes can be provided, proposed pavement makings, sidewalk locations, landing and tactile warnings based on ADA and MUTCD guidelines. The plan shall be submitted to the Kentucky Transportation Cabinet's Planning Department prior to its transmittal Metro Public Works Department for budgeting improvements.

04:55:03 Commissioner Mims asked if Metro Public Works or Metro Transportation have reviewed and agree to the proposed binding element. Ms. St. Germain said no.

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**The following spoke in favor of this request:**

Kent Gootee, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky.  
40219

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

04:57:21 Mr. Gootee said he started with KYTC to see if they have any plans for the Bardstown/Fegenbush intersection. KYTC referred Mr. Gootee to the Planning Dept. and then to KIPDA's Resource page, which shows 2 pedestrian connections on the east and west sides of Bardstown Rd. (none for Fegenbush). The research prompted the proposed binding element. A draft of this binding element was sent to Commissioner Brown and Travis Fiechter on Tues. of this past week but there was no response. Commissioner Mims said Public Works needs to review it or add to the binding element: ...subject to the final approval by Metro Public Works and/or 'The binding element is herein should be submitted to Metro Public Works for approval of the work scope' of what is being proposed by the binding element. Mr. Gootee responded, Metro Public Works is not the approving agency for that intersection. It will need to go to KYTC first.

05:09:13 Ms. Stuber said she was unable to verify with Commissioner Brown exactly what he wants but mainly it's general improvements. A study might be the best way to get started. Metro Public Works and KYTC will need to work together. No work can be done until a plan is presented.

05:13:53 Acting Chair Lewis said the applicant has done what the Planning Commission asked them to do at the last meeting.

**Deliberation**

05:15:33 Commissioner Howard said the plan is in order, including the additional binding element. The other commissioners agree.

**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.**

**Change in form district from Neighborhood to Suburban Marketplace Corridor**

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On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis and testimony heard at the hearings was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is adjacent to an existing activity center and the proposal would not constitute a non-residential expansion into an existing residential area; the site is located adjacent to Bardstown Road, a transit corridor, and next to an existing activity center; the proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted; the site is located near the intersection of Bardstown Road (a major arterial) and Fegenbush Lane (a minor arterial) and traffic will be routed along these roads; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the site is adjacent to an existing activity center and is in an appropriate location for the proposed uses; the site is adjacent to an existing marketplace corridor; the proposal would permit a more compact pattern of development in an existing activity center; the proposal would permit a mixture of compatible land uses in an existing activity center; the proposal would permit residential uses in the existing center; the proposal would not include any underutilized parking lots; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no natural systems are evident on the subject site; No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in a flood-prone area. No karst features are evident on the site; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is adjacent to an existing marketplace corridor. The applicant requests the appropriate Suburban Marketplace Corridor form district; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal would permit a mix of complementary neighborhood serving businesses; the proposal would permit a mixture

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of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments adjacent to an existing activity center; Transportation Planning has approved the proposal; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the site is located on a major arterial street; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would support aging in place by permitting higher density housing options on the site, or neighborhood-serving commercial uses in proximity to existing residential development; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; the proposal would permit housing in proximity to Bardstown Road, a multi-modal transportation corridor; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because the proposal would permit innovative methods of housing.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council change the form district from Neighborhood to Suburban Marketplace Corridor on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

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**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

**Zoning Change from R-4 to C-1**

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis, testimony from both hearings and the Applicant's Justification was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is adjacent to an existing activity center and the proposal would not constitute a non-residential expansion into an existing residential area; the site is located adjacent to Bardstown Road, a transit corridor, and next to an existing activity center; the proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted; the site is located near the intersection of Bardstown Road (a major arterial) and Fegenbush Lane (a minor arterial) and traffic will be routed along these roads; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the site is adjacent to an existing activity center and is in an appropriate location for the proposed uses; the site is adjacent to an existing marketplace corridor; the proposal would permit a more compact pattern of development in an existing activity center; the proposal would permit a mixture of compatible land uses in an existing activity center; the proposal would permit residential uses in the existing center; the proposal would not include any underutilized parking lots; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no natural systems are evident on the subject site; No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in a flood-prone area. No karst features are evident on the site; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is adjacent to an existing

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marketplace corridor. The applicant requests the appropriate Suburban Marketplace Corridor form district; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal would permit a mix of complementary neighborhood serving businesses; the proposal would permit a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments adjacent to an existing activity center; Transportation Planning has approved the proposal; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the site is located on a major arterial street; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would support aging in place by permitting higher density housing options on the site, or neighborhood-serving commercial uses in proximity to existing residential development; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; the proposal would permit housing in proximity to Bardstown Road, a multi-modal transportation corridor; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because the proposal would permit innovative methods of housing.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council the zoning from Single Family

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**CASE NO. 20-ZONE-0006**

Residential, R-4 to Commercial, C-1 on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

**Detailed District Development Plan and Binding Elements**

On a motion by Commissioner Howard, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis was adopted.

**WHEREAS**, no natural resources appear to exist on the site. The existing buildings are not proposed to be retained. However, the existing buildings do not appear to be historic sites; and

**WHEREAS**, 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**, there are no open space requirements pertinent to the current proposal; and

**WHEREAS**, 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 Louisville Metro Planning Commission finds, the overall site design is compatible with the existing and future development of the area. Appropriate buffering is being provided to the existing residential uses to the south. However, those uses are likely to change in the future as the activity center at the intersection expands; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code and the Comprehensive Plan.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **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, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Bardstown Road right-of-way.
  - c. A minor subdivision plat or other legal instrument shall be recorded creating the lot lines as shown on the development plan, dedicating additional right-of-way to Bardstown Road to provide a total of 65 feet from the centerline, and dedicating additional right-of-way to Fegenbush Lane to provide a total of 60 feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created for the new lots and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - e. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting



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

f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

g. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
7. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
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. The Developer / Property Owner shall install a concrete boarding pad, bench pad and then notify TARC when the construction is complete. TARC will then install a standard bench. In addition, the Developer / Property Owner shall clean the stop as needed.
10. Upon development or redevelopment of adjacent properties (currently McDonald's and National Express Car Wash), a unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout adjacent sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to Planning Commission legal counsel shall be recorded

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prior to the time of construction approval for the adjacent property to be developed.

11. Prior to building permit submission, the Developer shall prepare a Pedestrian Access/Crossing Plan for the Bardstown and Fegenbush Road Intersection, based on the two pedestrian crossing locations identified within Kentuckian Regional Planning and Development Agency (KIPDA) "Transit, Bicycle & Pedestrian" Focus Area provided through their Online Resource Center. The Plan shall include at a minimum, topographic information to ensure accessible slopes can be provided, proposed pavement makings, sidewalk locations, landing and tactile warnings based on ADA and MUTCD guidelines. The plan shall be submitted to the Kentucky Transportation Cabinet's Planning Department prior to its transmittal Metro Public Works Department for budgeting improvements.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

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**PUBLIC HEARING**

**CASE NO. 19-ZONE-0094**

Request: Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements, and associated landscape Waiver

Project Name: Westport Road Retail

Location: 917 and 919 Fountain Avenue, 4700 Westport Road

Owner: Estate of Evelyn Kaelin

Applicant: 4700 Westport LLC

Representative: Dinsmore & Shohl LLC

Jurisdiction: Louisville Metro

Council District: 7 – Paula McCraney

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

**Agency Testimony:**

05:21:14 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

05:36:08 Commissioner Seitz asked if the applicant has done everything the Planning Commission asked of them. Ms. St. Germain said with respect to the hours of operations and the lights, the applicant agreed to a binding element. Concerning the outdoor alcohol sales, it is permitted with a Conditional Use Permit, CUP and they can request that from the Board of Zoning Adjustment, BOZA.

05:37:55 Commissioner Mims asked, the C-1 request is acceptable, but the waiver is not? Ms. St. Germain said the staff finding is that the rezoning request with the proposed binding elements is in compliance with the Comprehensive Plan 2040 but the waiver is not adequately justified.

05:39:00 Commissioner Howard asked if there will be a fence at the south part of the development plan regarding the waiver. Ms. St. Germain said the applicant, at the time of the June hearing, had a landscape plan which included a fence. There was some discussion concerning the height of the fence in the front yard setback.

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05:40:48 Acting Chair Lewis asked if there's any scrutiny on written opposition in the record if it's other than a request for a night hearing. Ms. St. Germain answered, we do not review addresses when they object are in support of a rezoning request unless it is a petition for a night hearing. It's a public process and everyone is invited to give their opinion.

**The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, Ky. 40202

Kent Gootee, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

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

05:42:43 Mr. Ashburner gave a power point presentation. There has been commercial use of this property for, almost without interruption, for 100 years. It's an example of a non-conforming use. It's also on an arterial roadway. The applicant will be providing a solid screen with a significant amount of landscaping adjacent to Mr. Bivens home. It will be just as effective at 20 feet as it would at 25 feet. There's a significant distance between Mr. Biven and the proposed building.

05:52:20 Mr. Gootee discussed the screening.

Mr. Gootee said he spoke with Sherie Long, Landscape Architect, and she agreed the difference of 5 feet is not going to change the health and well being of the trees to be planted within the landscape buffer. There will also be an 8-foot fence.

05:59:32 Mr. Ashburner showed the letter of support from Mr. Wheeler.

06:02:15 Mr. Ashburner discussed his proposed binding elements. Also, the applicant/representatives are in agreement with the additional notice requirement as suggested by Ms. St. Germain. The applicant will provide, at its expense, screening in the front yard of 916 if so requested by the owner of the property at some point in the future.

**The following spoke in opposition to this request:**

Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299

Jeff Lemley, 1630 Snowmat Place, Lewisville, Texas, 75077

Susan Lemley, 1218 Halsworth Lane, Louisville, Ky. 40222

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**Summary of testimony of those in opposition:**

06:06:55 Mr. Porter stated he represents Mr. Bivens and the interest of others. There were a number of people that signed the petition and live in the area. Even if people don't live in the area, they understand the traffic issue.

06:10:48 Mr. Porter stated the staff report failed to include a number of appropriate elements in the Comprehensive Plan. Changes from the June staff report until now had 10 areas where there's no compliance of the plan. They have been changed now as to being in compliance.

06:19:00 Mr. Porter said this property was not commercial for 100 years, only a small portion (sliver). Also, a finding of fact for denial has been submitted into the record.

06:34:40 Mr. Porter remarked, the proposed location is not the right place for commercial.

06:35:30 Mr. Lemley stated he agrees with Mr. Porter. There is a proposed sanitary manhole with pipe that will run through the Ky. owned land next to Mr. Lemley's property. He said he's opposed to a sewer line running through where his children will be playing. The proposed lot is more appropriate for residential. The neighborhood (Fountain) doesn't have sidewalks or speed bumps and it will be a safety issue. There is a lot of pedestrian traffic. There are vacancies for commercial down the street.

06:43:20 Acting Chair Lewis polled the commissioners to discuss continuing this case.

06:49:42 Ms. Lemley stated she is opposed to any zoning change.

**Rebuttal**

06:51:20 Mr. Ashburner stated a zoning change is not an invitation to design a plan on a given piece of property. The proposal before you has been reviewed and recommended for approval by staff. It's very common to see commercial or non-residential use at the end of a residential street adjacent to an arterial roadway. The system of plan review encourages constant improvement of plans. That's why the recommendation has changed. The proposal has changed in order to make it more neighborhood-serving and neighborhood-friendly.

**Deliberation**

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06:55:40 Planning Commission deliberation.

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

On a motion by Commissioner Mims, seconded by Commissioner Seitz, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the October 1, 2020 Planning Commission meeting. Public testimony has been given today and will be voted on in Business Session of the next meeting.

**The vote was as follows:**

**YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Site Inspection Committee**

No report given.

**Planning Committee**

No report given.

**Development Review Committee**

No report given.

**Policy and Procedures Committee**

No report given.

**CHAIRPERSON/DIRECTOR'S REPORT**

No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 7:56 p.m.

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**Chair**

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**Planning Director**