

**Planning Commission Minutes
February 6, 2014**

Public Hearing

Case No. 17611

Project Name: Baxter Tracts

Location: 611 – 617 Baxter Avenue

Owners/Applicants: Glenmary Investment Group, LLC
615 Baxter Avenue
Louisville, KY 40204

Representatives: Deborah Bilitski
Wyatt, Tarrant & Combs LLP
500 West Jefferson Street Suite 2800
Louisville, KY 40202

John Miller
Miller/Wihry LLC
1387 South Fourth Street
Louisville, KY 40206

Jurisdiction: Louisville Metro
Council District: 4 – David Tandy

Case Manager: **Joseph Reverman, 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.)

Request:

A change in zoning from R-6 Multi-Family Residential to C-1 Commercial; a Detailed District Development Plan; Landscape Waivers; and a Variance are being requested.

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Agency Testimony:

Joseph Reverman presented the case and showed a Power Point presentation (see staff report and file for detailed exhibits.)

In response to a question from Commissioner Brown, Mr. Reverman confirmed that a formerly-requested sidewalk waiver has been **withdrawn**. Although it was still listed on the staff report, he confirmed that this was an error and should have been deleted. The applicant is providing sidewalks.

Mr. Reverman handed out binding elements proposed by the applicant (on file.)

The following spoke in favor of this request:

Deborah Bilitski, Wyatt, Tarrant & Combs LLP, 500 West Jefferson Street Suite 2800, Louisville, KY 40202

John Miller, Miller/Wihry LLC, 1387 South Fourth Street, Louisville, KY 40206

Kevin Jagers, 2093 Sherwood Avenue, Louisville, KY 40205

Beth Darryl (sp), 1115 Rogers Street, Louisville, KY

Summary of testimony of those in favor:

Deborah Bilitski, the applicant's representative, said the properties currently consist of some non-conforming uses which is part of the reason for the rezoning request. Also, the applicant would like to construct some improvements on the property. She briefly discussed the property which had suffered fire damage and needed to be demolished; a new building will be constructed there. The applicant is proposing to construct an office and storage building at the rear of the property. She said that rear area is currently one large, wide-open paved parking area with no landscape buffer or defined access points. The applicant is proposing to re-pave and restripe the parking areas and add a landscape buffer area where none currently exists. There will also be an underground detention basin added.

She discussed the variance and landscape waiver requests (on file with application.) She read the binding elements into the record, as follows:

1. The applicant shall solicit the input of the Irish Hill Neighborhood Association on the proposed landscape plantings prior to submitting the landscape plan to Louisville Metro Planning and Design Services for approval.

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2. Heavy trucks with two or more rear axles shall not be parked overnight on the subject property.

Commissioner Proffitt asked what would be done (changes made) to the existing structures. Ms. Bilitski said no major structural changes would be made, except to the fire-damaged building which will have to be demolished and replaced. She said there would be some small additions to the remaining buildings (a breezeway constructed between two of the buildings, and an exterior staircase added to one of the buildings. See renderings, on file.) She said nothing would be added along the front facades.

In response to a question from Commissioner Turner, Ms. Bilitski said the breezeway would be on the second level.

The following spoke in opposition to this request:

No one spoke.

The following spoke neither for nor against this request:

No one spoke.

Rebuttal:

There was no rebuttal, since no one spoke in opposition.

Discussion:

All of the Commissioners agreed that this is an appropriate request and use of the land. In response to a question from Commissioner Blake, the Commissioners also agreed that they felt that the applicant's justifications for the waiver requests were also appropriate.

An audio recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to obtain a copy. The recording of this hearing will be found on the CD of the February 6, 2014 public hearing proceedings.

Zoning

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

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WHEREAS, the Louisville Metro Planning Commission finds that the proposed change in zoning from R-6 Multi-Family Residential to C-1 Commercial on the properties located at 611 – 617 Baxter Avenue complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan (the “Comprehensive Plan”) because the subject property is located within an existing activity center along the Baxter Avenue commercial corridor in the Traditional Neighborhood Form District; the properties immediately to the south of the subject property as well as directly across Baxter Avenue are zoned C-1 Commercial; the proposed development will introduce a mixture of neighborhood-serving uses, including offices and shops, in an appropriate location and will preserve the existing grid pattern of streets, sidewalks, and alleys; adequate parking is provided on site and on the adjacent street to accommodate the needs of the proposed development; the parking area is located behind the buildings and will be accessed from the rear consistent with a traditional pattern of development; and the proposed new building construction incorporates materials and design features that are compatible with the character of the surrounding area and comply with the Traditional Neighborhood design standards set forth in the Land Development Code; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 2 of the Comprehensive Plan because it will encourage new development and rehabilitation of existing buildings to provide a mixture of commercial, office, and residential uses; the subject property is located in an existing commercial activity center along Baxter Avenue, with commercial uses immediately to the south and across Baxter Avenue to the west, and residential uses to the north and east; the proposed development will contribute to the overall mixture of uses in the area, is compatible with the existing development pattern, and consistent with the Traditional Neighborhood Form District; the subject property is currently served by all necessary utilities and infrastructure, and the proposed development will preserve existing buildings, streets, alleys, and sidewalks; the subject property is located along a busy commercial corridor that is served by public transit, public sidewalks exist along the frontage, and parking is located at the rear to balance safety, traffic, transit, pedestrian, and aesthetic concerns, therefore, the proposed development is compact and will result in the efficient use of land; and the proposed mixture of compatible uses will reduce vehicle trips, support the use of alternative forms of transportation, and encourage vitality and sense of place in this traditional neighborhood; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 3 of the Comprehensive Plan because the subject property is located in a mixed-use area along a busy commercial corridor that includes

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commercial, office, and residential uses; the proposed rezoning from R-6 to C-1 to allow a mixed use development is, therefore, compatible with existing zoning and will cause no adverse impacts to the surrounding area; three of the four existing buildings will be preserved, ensuring that the existing development pattern is maintained; the building located at 613 Baxter Avenue, which has been destroyed by fire damage, will be removed and replaced with a building that is consistent in design, materials, and character with the remaining buildings on site and the surrounding area; and outdoor lighting and signage will comply with Land Development Code requirements and will not negatively affect nearby residential properties; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 3 of the Comprehensive Plan because the subject property is appropriately located along a mass transit corridor and the existing sidewalks will be preserved along Baxter Avenue, ensuring that the proposed development is highly accessible by all modes of transportation, including pedestrian, bicycle, and transit; the subject property will contain sufficient parking on-site to serve the needs of the proposed development, including handicap-accessible spaces in accordance with local, state, and federal requirements; parking is located behind the buildings and accessed from the rear in conformance with a traditional neighborhood pattern of development; and the proposed setbacks, building heights, and architectural design preserve the character of the Baxter Avenue corridor and will ensure the development is compatible with the surrounding area; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 4 and 5 of the Comprehensive Plan because the subject property contains no environmental limitations and there are no natural, scenic, or historic resources that would inhibit the proposed development; due to the size of the subject property, no open space is required to be provided on site; three of the existing buildings are proposed to be preserved, and the fourth building will be replaced with one that is compatible in terms of height, bulk, scale, design, and placement, ensuring that the architectural integrity and character of the Baxter Avenue corridor is maintained; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 6 of the Comprehensive Plan because the subject property is located in an existing activity center along the Baxter Avenue commercial corridor; and the proposed development represents a significant investment in the redevelopment and rehabilitation of an older neighborhood in a manner that is consistent with the Traditional Neighborhood Form District; and

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WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 7, 8, and 9 of the Comprehensive Plan because it is located on Baxter Avenue, a major arterial roadway, which has adequate carrying capacity to handle traffic going to and from the development; the subject property is located on an existing transit route, and the existing sidewalks along Baxter Avenue will be preserved, ensuring that the proposed uses are easily accessible by bicycles, pedestrians, and motor vehicles; the proposed development is designed to facilitate safe vehicular and pedestrian access to the property because parking is behind the buildings and accessed from Bishop Street, which functions like an alley; adequate parking spaces are provided on the subject property as required by the Land Development Code, including handicap accessible spaces as required by the ADA; therefore, the proposal accommodates all modes of transportation, provides bicycle and pedestrian connections to surrounding properties, and is appropriately located for the proposed density and intensity; by providing a mixture of compatible uses, the proposed development will enable area residents and future employees to minimize vehicular miles traveled, as well as total travel time, in order to minimize air pollution and to conserve fuel; and the development is located to take advantage of the existing transportation system to complement the overall development of the area without the need for additional roadway or utility construction; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 10 and 11 of the Comprehensive Plan because the subject site is not located in the 100-year flood plain, and there are no streams, wetlands, or waterways on the site; an erosion prevention and sediment control plan will be implemented prior to construction utilizing best management practices as required by the Metropolitan Sewer District; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 12 of the Comprehensive Plan because the proposal represents an efficient land use pattern and utilizes current traffic patterns; the mixture of uses being proposed on the subject property will enable and promote a reduction in vehicle miles traveled and increased pedestrian travel, resulting in a reduction in commuting time and transportation-related air pollution; the subject site is located on a major arterial and the existing roadway infrastructure provides adequate capacity for the traffic going to and from the development; and the development plan has been reviewed by the Air Pollution and Control District, which provided no comment on adverse air quality impact; and

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WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 13 of the Comprehensive Plan, because it meets the landscape requirements of the Land Development Code; landscape buffer areas will be provided on the subject property to enhance the aesthetic quality of the site; and outdoor signage and lighting will comply with the Land Development Code and will be compatible with the surrounding area;

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 14 and 15 of the Comprehensive Plan because the subject property is served by existing infrastructure and all necessary utilities, including water, electricity, telephone, and cable are available; and the development has an adequate supply of potable water and water for fire-fighting purposes and is served by the Louisville Fire Department; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore
be it

RESOLVED, the Louisville Metro Planning Commission does hereby
RECOMMEND to the legislative council of Louisville Metro Government that the change in zoning from R-6 Multi-Family Residential to C-1 Commercial on property located at 611-617 Baxter Avenue as described in the attached legal description, be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.

NO: No one.

NOT PRESENT: Commissioners Hughes, White, and Peterson.

ABSTAINING: No one.

Jonathan Baker, legal counsel for the Planning Commission, suggested that the development plan and the accompanying variance and waivers could be voted on together. Commissioner Brown asked if the neighbors supported the binding elements as they were presented today. Ms. Bilitski said there is a neighbors' representative present today, who was also present at LD&T meeting, who has seen the binding elements and is in support. Beth Darryl (sp), a resident who is on the board of the Irish Hill Neighborhood Association, said the binding

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elements addressed the residents' concerns and the Association is now in favor of the rezoning and the project.

Detailed District Development Plan, Variance, Landscape Waivers, and Binding Elements

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

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

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

WHEREAS, the Commission further finds that there are no open space requirements with the current proposal. Future multi-family developments proposed on the subject site will be required to meet Land Development Code requirements; and

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

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

WHEREAS, the Commission further finds that the requested variance of table 5.2.2 of the Land Development Code (LDC) to reduce the 5 ft rear yard setback along Bishop to St to 3 ft. will not adversely affect the public health, safety or welfare since safe vehicular and pedestrian access is being provided along Bishop Street; and

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WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the area is densely developed, since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since safe vehicular and pedestrian access is being provided along Bishop Street; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulation since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances that do not generally apply to land in the general vicinity or the same zone since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

WHEREAS, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

WHEREAS, the Commission further finds that the requested Landscape Waiver of section 10.2.10 of the Land Development Code (LDC) to reduce the 5 ft Vehicular Use Area (VUA) Landscape Buffer Area (LBA) along Bishop St to 3 ft. will not adversely affect adjacent property owners since safe vehicular and pedestrian access is being provided along Bishop Street, and since the parking area will be screened from the right-of-way; and

WHEREAS, the Commission further finds that the waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways

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through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. The waiver will not violate specific guidelines of Cornerstone 2020 since the proposed curb cuts and landscape screening will improve the appearance of the existing parking lot on the site; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the landscape screening is being provided to screen the parking lot from Bishop St, and since there is an existing parking lot on the site, and since the proposed curb cuts and landscape screening will improve the appearance of the existing parking lot on the site; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant since the proposed curb cuts and landscape screening will improve the appearance of the existing parking lot on the site; and

WHEREAS, the Commission further finds that the requested Landscape Waiver of section 10.2.4 of the Land Development Code (LDC) to reduce the 15 ft Landscape Buffer Area (LBA) along the northwest property line to 0 ft; (the 8 ft screen would still be provided) will not adversely affect adjacent property owners since the building on the site is existing and the site is located in a densely developed area, since this area of the property is already used for parking, and since the parking area will be screened from the adjacent property to the north; and

WHEREAS, the Commission further finds that Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation

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areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The waiver will not violate specific guidelines of Cornerstone 2020 since the proposed fence will minimize the potential impacts of the parking lot to the adjacent lot to the north; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the building on the site is existing and the site is located in a densely developed area, since this area of the property is already used for parking, and since the parking area will be screened from the adjacent property to the north; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant since the building on the site is existing and the site is located in a densely developed area, since this area of the property is already used for parking, and since the parking area will be screened from the adjacent property to the north; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore
be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for property located at 611 – 617 Baxter Avenue and being in Louisville Metro, **AND** the Variance of table 5.2.2 of the Land Development Code (LDC) to reduce the 5 ft rear yard setback along Bishop to St to 3 feet; **AND** the Landscape Waiver of section 10.2.10 of the Land Development Code (LDC) to reduce the 5 ft Vehicular Use Area (VUA) Landscape Buffer Area (LBA) along Bishop St to 3 feet; **AND** the Landscape Waiver of section 10.2.4 of the Land Development Code (LDC) to reduce the 15 ft Landscape Buffer Area (LBA) along the northwest property line to 0 feet, provided that the 8 ft screen would still be provided adjacent to the parking lot; and **SUBJECT** to the following Binding Elements:

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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 (and to the City of Lyndon, St. Matthews, Hurstbourne, or Middletown) 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. 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 Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
4. 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.
5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

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6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 6, 2014 Planning Commission meeting.
7. **The applicant shall solicit the input of the Irish Hill Neighborhood Association on the proposed landscape plantings prior to submitting the landscape plan to Louisville Metro Planning and Design Services for approval.**
8. **Heavy trucks with two or more rear axles shall not be parked overnight on the subject property.**

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.

NO: No one.

NOT PRESENT: Commissioners Hughes, White, and Peterson.

ABSTAINING: No one.