

**Planning Commission Minutes
May 29, 2014**

Public Hearing

Case No. 14ZONE1001

Project Name: 1373 Lexington Road

Location: 1373 Lexington Road

Owner: J. Chris McClellan
6202 Six Mile Lane LLC
P.O. Box 206004
Louisville, KY 40250

Applicant: Kelli Lawrence
Cityscape Residential
8888 Keystone Crossing Suite 1300
Indianapolis, IN 46240

Representative: Deborah Bilitski
Wyatt Tarrant & Combs
500 West Jefferson Street
Louisville, KY 40202

Architect/Engineer: Kevin Young
Land Design & Development Inc.
503 Washburn Avenue
Louisville, KY 40222

Jurisdiction: Louisville Metro
Council District: 9 – Tina Ward-Pugh

Case Manager: **Julia Williams, 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.)

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Request:

A change in zoning from M-3 Industrial to R-8A Multi-Family Residential; a Revised District Development Plan; a building height variance; landscape waivers; and a waiver to permit parking in front of the principle structure.

Agency Testimony:

Julia Williams presented the case and showed a Power Point presentation, which included maps and photos of the site and the surrounding area (see staff report for detailed presentation.)

In response to a question from Commissioner Brown, Ms. Williams said that, if the adjoining property were to be downzoned in the future, the buffer requirement would still be 15 feet.

In response to questions from Commissioner Proffitt, Ms. Williams said there are no other R-8A-zoned properties in the immediate area. She said R-8A is the minimum zoning classification required to meet the density that the applicant is proposing.

The following spoke in favor of this request:

Kelli Lawrence, Cityscape Residential, 8888 Keystone Crossing Suite 1300, Indianapolis, IN 46240

Ray Schuhmann, 200 Distillery Commons Suite 200, Louisville, KY 40206

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

Kevin Young, Land Design & Development Inc., 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in favor:

Deborah Bilitski, the applicant's representative, presented the case and showed a Power Point presentation (see applicant's booklet for detailed presentation.) She pointed out the site's proximity to Frankfort Avenue to the north, and Baxter Avenue to the west.

Kevin Young, an applicant's representative, discussed environmental and design features as well as parking. He said the applicant wants this site to be a catalyst for developing a streetscape along Lexington Road in this area.

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Ms. Bilitski briefly reviewed some aspects of the elevations. She said many of the variances and waivers are being requested due to the applicant's efforts to preserve and protect Beargrass Creek. She said she has heard of no opposition, but there is a letter of support.

Ray Schuhmann, the owner of property across the street, spoke in support. He said this is currently a blighted site, and he strongly supports the proposal.

Commissioner Proffitt asked who will maintain the bioswales and the pervious pavement. Pat Barry, representing MSD, said the property owner signs a maintenance agreement, and these systems are inspected by MSD yearly.

In response to some questions from Commissioner Proffitt, Mr. Young and Ms. Kelli Lawrence discussed the parking design.

In response to some question from Commissioners Brown and Blake, Ms. Williams said she had received another letter today from the Irish Hill Neighborhood Association supporting the most recent development plan, including revisions to the southeast corner. Ms. Williams described what is in the southeast corner and what changes had been made from the original plan.

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.

A 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 is available under the May 29, 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 M-3 Industrial to R-8A Multi-Family Residential on the property located at 1373 Lexington Road complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the proposed development is located within an existing activity center along Lexington Road in a Traditional Neighborhood Form District; the proposed development will enable an old industrial site to be redeveloped into an upscale multi-family residential community; the proposed development will preserve the existing sidewalk and street pattern; streetscape improvements will be made along the Lexington Road frontage to enhance the pedestrian experience; the site design is consistent with the traditional pattern of development, with buildings located along the Lexington Road frontage and parking located primarily to the sides and rear of the buildings; the subject property is located in very close proximity to Breslin Park, a public park just east of the site at the intersection of Lexington Road and Payne Street; and the proposed construction incorporates materials and design features that are compatible with the character of the surrounding area; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 2 of the Comprehensive Plan because the proposed development is located within an existing activity center that contains a mixture of industrial, residential, commercial, and office uses; the site plan incorporates focal points around the site, including a pool, rain gardens, and open space areas around Beargrass Creek; the proposed development allows for the conversion of an old blighted industrial site into a multi-family residential development, which will help to stabilize the area and add to the diverse mixture of uses in the Irish Hill neighborhood; and the proposed development will provide a unique housing type and building style that does not currently exist in the neighborhood; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 2 of the Comprehensive Plan because the proposed development will incorporate streetscape amenities, landscaping, pedestrian connections, and adequate on-site parking; the site design focuses the buildings to the street and away from the natural features of the site, giving greater attention to the buildings and streetscape; the buildings will be articulated to provide visual interest and will include brick and glass materials, transparent doorways and entry areas, and other animating features; the subject site is located along a transit corridor in close proximity to downtown, sidewalks will be provided along the Lexington Road frontage, and bicycle parking will be provided in the development; the proposal represents a compact pattern of development resulting in the efficient use of land; and the proposed mixture of compatible uses will reduce vehicle

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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 corridor that includes industrial, commercial, office, and residential uses; directly across Lexington Road from the subject site is the Distillery Commons complex and Headliners Music Hall, both of which are zoned EZ-1; the proposed residential development is compatible with the scale and site design of development in the surrounding area, including Distillery Commons, and with the pattern of development of the Traditional Neighborhood Form District; the vegetation along Beargrass Creek provides a buffer where the site adjoins the higher intensity M-3 and EZ-1 zoned properties; and the proposed rezoning will not adversely impact the surrounding area;

WHEREAS, the Planning Commission further finds the proposed rezoning complies with Guideline 3 of the Comprehensive Plan because the proposed buildings will incorporate architectural design features compatible with the character of the surrounding neighborhood; the buildings will be oriented towards the street frontage with setbacks that meet the form district standards; the proposed development will contain sufficient parking to the sides and rear of the buildings to serve the needs of the residents of the development and their guests; the subject site's two access points are off of Lexington Road and are designed and located to be safe and convenient for motorists and pedestrians, and will not negatively impact nearby properties; the proposed residential development is appropriately located on a transit corridor; sidewalks and internal pedestrian connections are being provided to ensure the development is highly accessible by all modes of transportation; the proposed development contains trees and other landscaping along the Lexington Road frontage and throughout the site to break up parking areas and enhance the aesthetic character of the development; and the proposed development's 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 4 of the Comprehensive Plan because the subject property is located in close proximity to Breslin Park, a public park; in addition, the proposed development contains large areas of open space along Beargrass Creek as well as throughout the development; the open spaces around Beargrass Creek will serve as natural buffers against the adjacent higher density zoning districts and will help treat some of the site's run-off before entering the creek; and green infrastructure measures are being incorporated into the site development,

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including rain gardens and bio-cells, which will provide additional water quality benefits and reduce the volume and flow of stormwater runoff; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 4 of the Comprehensive Plan because the proposed development respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes land disturbance and environmental degradation; the proposed development preserves the required stream buffer along Beargrass Creek, and will integrate bio-cells which will provide additional water quality and stormwater drainage benefits; and the proposed buildings will be constructed on podiums to ensure there are no negative impacts to the watershed and its capacity to carry stormwater; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 6 of the Comprehensive Plan because the subject property is located within an existing activity center along Lexington Road near the intersection of Payne Street; and the proposed development represents a significant investment in the redevelopment and rehabilitation of a vacant, blighted industrial site in a manner that is consistent with the Traditional Neighborhood Form District; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 7, 8 and 9 of the Comprehensive Plan because the subject site is located on Lexington Road, a minor arterial, near the intersection of Payne Street, a primary collector to the north and local road to the south, which together will provide adequate carrying capacity to handle the traffic going to and from the development; additional right-of-way will be dedicated along Lexington Road to accommodate future improvements; the two entrances to the development are designed to ensure the safe and efficient movement of pedestrians and vehicles without causing a nuisance to adjacent property owners; sufficient vehicle parking spaces, including handicapped spaces required by the ADA, are provided on site; and parking is located primarily to the sides and rear of the proposed buildings in conformance with Traditional Form District standards; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 7, 8 and 9 of the Comprehensive Plan because the subject property provides bicycle parking on site; the sidewalks along the Lexington Road frontage will be improved and pedestrian connections will be provided from the public sidewalk to the proposed development; the subject site is located along a TARC route, ensuring an adequate level of public transit service; the proposed development accommodates all modes of transportation by providing

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for the movement of pedestrians, bicyclists, vehicles and transit users to, from, and through the development; and being located in an activity center on a minor arterial roadway in close proximity to neighborhoods and downtown Louisville, with adequate pedestrian, bicycle, and transit service, the subject site is located where transportation infrastructure exists to ensure the safe and efficient movement of people and goods; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 10 and 11 of the Comprehensive Plan because the buildings will be constructed on podiums to ensure there are no negative impacts to the watershed and its capacity to carry stormwater; the proposed development is located on a site that will enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties; Beargrass Creek will be maintained in its current location and buffered in accordance with Land Development Code requirements; the proposed development's large open space areas around Beargrass Creek as well as the green infrastructure measures that will be incorporated into the development will provide water quality benefits by treating stormwater runoff before it enters the creek; the addition of landscape islands, bio-cells and other open space throughout the development will significantly improve the stormwater maintenance on the site; the proposed development minimizes impervious area by providing parking under the buildings; and 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

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 proposed development 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 minor arterial and the existing roadway infrastructure provides adequate capacity for the traffic going to and from the development; and the proposed development will promote bicycle transportation due to its proximity to the Central Business District, Beargrass Creek Parkway and other surrounding neighborhoods; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guideline 13 of the Comprehensive Plan because the tree canopy will be provided in accordance with the Land Development Code; a vegetative buffer will be preserved along Beargrass Creek to not only buffer the proposed development from surrounding properties, but also to preserve a natural

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greenway corridor that can provide habitat areas and allow for wildlife migration; the proposed development will utilize native plant species in the landscape design, street trees will be planted along Lexington Road to enhance the streetscape; significant interior landscaping will be installed throughout the site and in the vehicular use areas, which will enhance the buildings, break up the parking areas, and enhance the overall visual quality of the development; and outdoor signage and lighting will comply with the Land Development Code and will be compatible with the surrounding area; and

WHEREAS, the Commission further finds that the proposed rezoning complies with Guidelines 14 and 15 because the subject property is served by existing infrastructure and all necessary utilities, including water, electricity, telephone and cable; 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 Louisville Metro Council that the proposed change in zoning from M-3 Industrial to R8-A Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Variance

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

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance of Section 5.2.2.C. – Table 5.2.2. of the Land Development Code ("LDC") to permit the proposed buildings to be 75 feet in height will not adversely

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affect the public's health, safety or welfare, and will not alter the essential character of the area because the proposed development is consistent with the surrounding properties, specifically the buildings along Lexington Road, including the Distillery Commons complex directly across the street, which is approximately 57 feet in height; the subject property is within an existing activity center along Lexington Road, with commercial properties to the east and south, and industrially-zoned properties to the west and north; the site is buffered from the majority of the surrounding properties by Beargrass Creek, which runs along a significant portion of the property; this site was historically part of the National Distillers and Chemical Company (now Distillery Commons) development which included buildings as tall as 100 feet; there are no residential properties surrounding the subject site, and the nearest residential area to the south of the site is approximately 30 feet above grade elevationally from the subject property; the proposed development is compatible with the surrounding developments and the Traditional Neighborhood pattern of development and will incorporate site design and architectural qualities compatible with the character of the surrounding area, which blends the existing industrial character of the area with the more traditional architecture found in and around the Irish Hill neighborhood; the buildings will be constructed using a mixture of materials, including brick and glass, and will incorporate architectural features including windows and entryways consistent with traditional development in an urban setting; the building façades will be articulated to create an interesting streetscape, and the sidewalks will be improved along Lexington Road as shown on the development plan; open space is provided within the development in excess of the LDC requirements, and street trees and interior landscaping will be provided to enhance the visual quality of the development; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public because the buildings are designed to be consistent with the pattern of development in the general vicinity, including other repurposed industrial sites in the area, and will incorporate architectural features that will complement the character of the neighborhood; the proposed development represents a significant investment in the redevelopment of a vacant blighted industrial site; the proposed development will be compatible with existing development in the area and will not cause any adverse impacts to surrounding properties; further, by adding a story to the building height and providing parking under the buildings, the applicant is able to minimize impervious area and provide a greater stream buffer along Beargrass Creek than required by the Land Development Code; and

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WHEREAS, the Commission further finds that special circumstances exist that do not apply to land in the general vicinity or in the same zone because the subject property is located almost entirely within the 100-year floodplain; in order to comply with the Floodplain Management Ordinance, the buildings must be elevated, which results in additional building height; the applicant is not responsible for these site conditions, and therefore, the circumstances giving rise to the variance are not the result of actions taken by the applicant subsequent to the adoption of the regulations from which relief is sought; 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 because, if the requested variance is not granted, the applicant will be unable to develop the land in a manner consistent with properties in the surrounding area, a substantial number of dwelling units would be lost, making the project financially infeasible; 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 requested Variance from Table 5.2.2 to increase the maximum building height from 45' to approximately 75', a 30' variance.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Waiver #1 - Chapter 10.2.4 to permit the encroachment of parking into a 15' LBA along the east property line.

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

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not affect adjacent property owners as the adjacent property is the more intense user. The reduction in buffer affects the subject site and its future residents more

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so than the existing adjacent property. The screening and buffering requirements will still be met within the buffer provided; and

WHEREAS, the Commission further finds that the site will still be compatible with the adjacent car repair business because the buffering and screening requirements will still be met; and

WHEREAS, the Commission further finds that, since the most affected property is the subject site and the buffering requirements will still be met, the waiver is the minimum for relief for the applicant; and

WHEREAS, the Commission further finds that the strict application would deprive the applicant of strict use of the land because the buffer would otherwise need to be provided by the more intense use which in this case would be the adjacent auto repair; 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 requested Waiver from Chapter 10.2.4 to permit the encroachment of parking into a 15' LBA along the east property line.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Waiver #2 - Chapter 10.2.12 to permit a greater distance between ILAs.

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

WHEREAS, the Louisville Metro Planning Commission finds that the request will not affect adjacent property owners because the ILAs are within a parking lot interior to the site. The greater spacing will allow for bio-retention within larger

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ILAs which ultimately will benefit adjacent property and the overall health of Beargrass Creek; and

WHEREAS, the Commission further finds that the comprehensive plan will not be violated because the overall ILA requirement will be met on the site and the bio-retention areas will benefit Beargrass Creek by preventing direct pollutants from going into the creek; 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. Relief in this case benefits Beargrass Creek more so than the applicant because bio-retention will prevent pollutants from entering Beargrass Creek directly; and

WHEREAS, the Commission further finds that the other design measures incorporated here are having the ILAs be larger and used for bio-retention which benefits Beargrass Creek and its environs; 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 requested Waiver from Chapter 10.2.12 to permit a greater distance between ILAs.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Waiver #3 - Chapter 5.4.1.G.1.b to permit parking west of Building A to not be located to the rear of the building.

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

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WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not affect adjacent property owners because the minimal parking area will still be screened from the adjacent ROW by a wall; and

WHEREAS, the Commission further finds that the comprehensive plan guidelines will not be violated because the parking area will still be screened by use of a wall which is consistent with the overall development increasing the compatibility with the traditional form; and

WHEREAS, the Commission further finds that the encroachment is minimal and the applicant is providing a wall along the length of the property which makes the waiver the minimum necessary for relief. The situation arises due to the curve in Lexington Road. The other parking on the site is located behind the buildings making this area the only portion where there is minimal encroachment; and

WHEREAS, the Commission further finds that the applicant is providing a 4' wall to screen the parking and provide a continuation of the street wall that is being created by the proposed buildings; 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 requested Waiver from Chapter 5.4.1.G.1.b to permit parking west of Building A to not be located to the rear of the building.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Revised District Development plan and Binding Elements

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

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal preserves Beargrass Creek on the site and complements that preservation by using bio-retention within the interior landscape islands. Trees will be preserved within the stream buffer and additional plantings will be located throughout the site per Chapter 10 requirements; and

WHEREAS, the Commission further finds that both pedestrians and vehicle users are provided for by the use of driveways and sidewalks throughout the site. Two of the structures are located along the street which allows for pedestrian access to and from the apartments and connects the site to the transit available along Lexington Avenue; and

WHEREAS, the Commission further finds that the site is preserving the creek within the required stream buffer but Breslin Park is also located near the site which can be utilized as open space for the site; and

WHEREAS, the Commission further finds that the provision for adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community has been met. MSD has preliminarily approved the proposal; and

WHEREAS, the Commission further finds that the proposal follows the traditional form which would aid in future developments following in the same pattern. The area is mainly industrial/office. The proposal adds density to this mixed area which has the potential to bring in commercial uses or other densities; 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 Revised Detailed District Development Plan and **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

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Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. The development shall not exceed 350,000 square feet of gross floor area.
3. No 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:
 - 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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.
7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and

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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.

8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 29, 2014 Planning Commission meeting.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.