

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
November 20, 2014**

A meeting of the Louisville Metro Planning Commission was held on November 20, 2014 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Donnie Blake, Chair
David Proffitt, Vice-Chair
Vince Jarboe
Lloyd "Chip" White
Jeff Brown
Clifford Turner
Carrie Butler

Commission members absent:

Robert Peterson
Robert Kirchdorfer **arrived at 4:07PM**
David Tomes

Staff Members present:

Joseph Reverman, Planning Manager
Emily Liu, Planning Director
John Carroll, Legal Counsel
Jon Baker, Legal Counsel
Christopher Brown, Planner II
Julia Williams, Planner II
David Wagner, Planner II
Sharonda Duerson, Management Assistant (minutes)

The following matters were considered:

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APPROVAL OF MINUTES

OCTOBER 30, 2014 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Turner, seconded by Commissioner White, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on October 30, 2014.

The vote was as follows:

YES: Commissioners Blake, Turner, Butler, Jarboe and White

NO: No one

NOT PRESENT FOR THIS CASE: Commissioners Kirchdorfer, Tomes and Peterson

ABSTAINING: Commissioners Proffitt and Brown

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APPROVAL OF MINUTES

NOVEMBER 6, 2014 PLANNING COMMISSION REGULAR MEETING MINUTES

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

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on November 6, 2014.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Turner, Butler, Jarboe and White

NO: No one

NOT PRESENT FOR THIS CASE: Commissioners Kirchdorfer, Tomes and Peterson

ABSTAINING: No one

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PUBLIC HEARING

CASE NO. 14AMEND1003

Request: LDC Round Two Text Amendments Landscaping

Staff Case Manager: Julia Williams, Planner II

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

Agency Testimony:

00:07:38 Julia Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Kathy Linares, 5151 Jefferson Blvd, Suite 101, Louisville, KY 40219

Summary of testimony of those in favor:

00:19:07 Ms. Linares stated she didn't attend a lot of the meetings, however, she does know that there was a lot of compromise and because of this she hopes to not have any of it changed.

The following spoke in neither favor nor opposition of this request:

Katy Schneider, 1219 Summit Avenue, Louisville, KY 40204
Tara Brinkmoeller, 1000 N. Hurstbourne Pkwy, Louisville, KY 40223
Kevin Rich, 640 S. 4th Street, Suite 200, Louisville, KY 40202
Kelli Jones, 608 S. Third Street, Louisville, KY 40202

Summary of testimony of those in neither favor nor opposition:

Ms. Brinkmoeller had similar comments as Ms. Linares stated.

Ms. Jones also said she felt like the committee came up with some good suggestions with this section of the code.

Mr. Rich stated the process was long and was provided a little more flexibility for those who use the code.

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Ms. Schneider agreed with the other speakers however, there were two areas of concern that she wanted the Commission to know about it. She stated the Tree Advisory Commission conducted a thorough review of Chapter 10, Part 1 and determined that two sections to be in direct opposition to the mission with which it has been charged.

Deliberation

00:37:40 Jon Baker asked the Commission to hold off on including within the motion Item #3 of the recommendations due to receiving new information.

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.

Landscaping Final Report and Recommendations

On a motion by Commissioner Proffitt, seconded by Commissioner Butler, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that LAND ITEMS #1, 4, 7, 9-34, and 36-59 as listed in the final staff report be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Turner, Butler, Jarboe and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Kirchdorfer, Tomes and Peterson

ABSTAINING: No one.

Land Item #3

On a motion by Commissioner Proffitt, seconded by Commissioner Butler, the following resolution was adopted.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** LAND ITEM #3 to the next regular Planning Commission meeting, December, 4 2014, so that Legal Counsel can review and report back to the Commission.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Turner, Butler, Jarboe and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Kirchdorfer, Tomes and Peterson

ABSTAINING: No one.

Land Item #6

On a motion by Commissioner Butler, seconded by Commissioner Proffitt, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** discussion of the non-recommendations to the December 4, 2014 Planning Commission with the exclusion of Land Item #6.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Turner, Butler, Jarboe and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Kirchdorfer, Tomes and Peterson

ABSTAINING: No one

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PUBLIC HEARING

CASE NO. 14SUBDIV1008

Request: Preliminary Major Conservation Subdivision Plan and Waivers

Project Name: Urton Woods, Section 2

Location: 12801 and 12901-R Urton Lane

Owner: William and Barbara Dehart
2931 Riedling Drive
Louisville, KY 40206

Bill and Anne Spurlock
12901 Urton Lane
Louisville, KY 40243

Applicant: Ball Homes, LLC
3609 Walden Drive
Lexington, KY 40517

Representative: Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy, 2nd Floor
Louisville, KY 40223

Mindel Scott & Associates, Inc.
5151 Jefferson Blvd
Louisville, KY 40219

Jurisdiction: City of Middletown

Council District: 19-Jerry Miller

Staff Case Manager: David B. Wagner, Planner II

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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Agency Testimony:

00:45:01 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy, Louisville, KY 40223
David Mindel, 5151 Jefferson Blvd, Louisville, KY 40219
Rocco A. Pigneri, 2527 Nelson Miller Pkwy, Suite 207, Louisville, KY 40223
Kathy Linares, 5151 Jefferson Blvd, Louisville, KY 40219
Marty Ochsner, 1021 Elisabeth Drive, Ofallon, KY 62269
Chuck Kavanaugh, 1000 N. Hurstbourne Pkwy, Louisville, KY 40223

Summary of testimony of those in favor:

00:57:49 Mr. Bardenwerper gave a power point presentation regarding the proposed Urton Woods preliminary major conservation subdivision plan.

01:10:09 Mr. Mindel explained the geo-technical report to the Commission.

01:16:47 Ms. Linares discussed with the Commission some of the drainage issues.

01:19:38 Mr. Ochsner agreed with the testimonies given and said that he was in support of the proposed project.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299
Mark Cooke, 12924 Urton Lane, Louisville, KY 40243
Terry Wetherby, 12905 Urton Lane, Louisville, KY 40243

Summary of testimony of those in opposition:

01:28:31 Mr. Porter spoke representing the neighbors of Urton Woods. He said they were not in agreement with the proposed development because they would like to see that it remains 30 acres of woods.

01:35:58 Mr. Cooke said his issues with the proposed development would be the traffic concerns within the neighborhood.

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01:39:14 Ms. Wetherby was concerned with the information being reported within the geo-technical report stating that it was only one sinkhole found on the property. She stated that when she walked the property she found at least five on the property. She passed around pictures of the sinkholes to the Commission.

The following spoke neither for nor against the request:

No one

Rebuttal

01:52:03 Mr. Bardenwerper spoke about the geo-technical studies regarding the 30% slopes on the proposed development and also addressed the sinkhole count discrepancy.

Deliberation

02:02:19 All Commissioners were in favor of the conservation subdivision plan, however, some had concerns with approving the waiver.

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.

Waiver (LDC 5.9.2.A.1.a.ii)

On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds the waiver will not adversely affect adjacent property owners because the owners of adjoining Ochsner Farm property has agreed that a stub connection to the north is better than one with significant frontage along Urton Lane and with a connection through the new apartment building property to the north which leads to Shelbyville Road. The Ochsner Farm property could develop in any number of ways, residential, business park or retail. Therefore, lots of decisions, including those regarding points of access, will be made at a future date and do not need to be made at this time through the provision of this Urton Woods connector to the east.

WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not violate the Comprehensive Plan because connectivity is provided as shown on the

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accompanying conservation subdivision plan, just not at this east location. Furthermore, as set forth in # 1 above, points of access to and connection throughout the Ochsner Farm and to other properties will be determined when that large tract is developed in the future. Not providing this particular connection from Urton Woods does nothing to limit the Ochsner Farm development's access and connectivity options.

WHEREAS, the Louisville Metro Planning Commission further finds the extent of waiver of the regulation the minimum necessary to afford relief to the applicant because connections to the north as well as to the already built section of Urton Woods are provided, just not to the east for the reasons set forth in #s 1 and 2 above.

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the applicant would lose a lot or two to create an access point that is unnecessary for the reasons described in #s 1 and 2 above and not even desired by the owners of the Ochsner Farm for many of the same reasons.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Waiver** of section 5.9.2.A.1.a.ii of the Land Development Code to not provide a stub street on the east side of the site to connect to the lot owned by the Ochsner Family.

The vote was as follows:

YES: Commissioners Blake, Jarboe, White, Turner and Proffitt

NO: Commissioners Butler and Brown.

NOT PRESENT AND NOT VOTING: Commissioners Peterson, Kirchdorfer and Tomes

ABSTAINING: No one.

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Preliminary Major Conservation Subdivision Plan

On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Preliminary Major Conservation Subdivision Plan subject to the following Conditions of Approval:

1. 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.
2. 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.
3. 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 Codes and Regulations Construction Permits and Transportation Planning Review 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 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.

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- e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
4. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. The 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 LD&T action.
8. 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 restrictions shall be approved by Planning Commission counsel. All plans setting out woodland protection areas must contain the following notes:
 - a. Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which existing vegetation shall be permanently preserved as noted on the plan. All clearing, grading, and fill activity in

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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. As trees are lost thru natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan.

- b. Prior to any site disturbance permit being issued and prior to any clearing, grading, or the issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
9. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
- a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
10. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
11. 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.

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12. The location of sinkholes as shown on the preliminary plan shall be identified on the record plat.
13. A geotechnical report shall be conducted for the site and the results shall be submitted to PDS staff prior to transmittal of the plan to permitting agencies and shall be submitted to Public Works and MSD for review prior to construction plan approval. Construction methods and precautions recommended in the report shall be applied to construction within the development.
14. A Woodland Protection Area (WPA) shall be imposed on Lot 103. Within this WPA and any other area designated as WPA, no cutting or clearing shall occur except (a) as necessitated for utilities and as approved by the applicable utility authority and (b) with respect to noxious or invasive species, dying or dead trees and then, in the event of this subsection (b), only with 10 calendar days advance written notice (i) to the immediate adjoining property owners (including any immediate adjoining across Urton Lane) and (ii) to a DPDS staff landscape architect, the latter whose advance approval shall be required in order to cut or clear any of same.

The vote was as follows:

YES: Commissioners Blake, Jarboe, White, Brown, Turner and Proffitt

NO: Commissioner Butler.

NOT PRESENT AND NOT VOTING: Commissioners Peterson, Kirchdorfer and Tomes

ABSTAINING: No one.

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CASE NO. 14ZONE1027

Request: Change in zoning from R-4, Single Family Residential to C-1, Commercial, Detailed District Development Plan and Binding Elements, and Waivers

Project Name: Zaxby's

Location: 8018-8102 Old Bardstown Road
9816 & 9816-R Hillock Drive

Owner: Thomas Grove Management Co., LLC
PO Box 1282
Prospect, KY 40059

Mark & Linda Shircliff
11420 Race Road
Louisville, KY 40291

Applicant: Zaxby's of Louisville
2001 Ashley's Court
Louisville, KY 40242

Representative: Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy
Louisville, KY 40223

Land Design & Development, Inc.
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Jurisdiction: Louisville Metro

Council District: 22-Robin Engel

Staff Case Manager: David B. Wagner, 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

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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:

02:22:50 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy, 2nd Floor, Louisville, KY 40223
Ann Richard, 503 Washburn Avenue, Suite 101, Louisville, KY 40222
Tim Hatfield, 4740 Dunbar Valley Road, Fisherville, KY 40023
Steve Brewer, 2001 Ashley's Court, Louisville, KY 40242

Summary of testimony of those in favor:

02:34:56 Mr. Bardenwerper gave a power point presentation regarding the proposed development at Old Bardstown Road.

02:45:40 Mr. Hatfield spoke and said his only concerns would be the cross access traffic between the proposed development and the existing daycare.

02:50:40 Ms. Richard spoke and gave the Commission some information regarding the catch basin and underground retention basin.

The following spoke in opposition to this request:

Coulter Marvel, 10115 Landwood Drive, Louisville, KY 40291

Summary of testimony of those in opposition:

02:51:49 Mr. Coulter said that his main concern regarding the proposed project would be the safety of the kids who attend the daycare considering there will be access traffic flow coming through going to the proposed development.

Rebuttal

02:57:13 Mr. Bardenwerper's rebuttal consisted of discussing the configuration of the intersection. He said that he believes the reason Public Works and Transportation Planning approved the plan was because it would give them an opportunity to advance

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their planning ability, but to also receive dedicated roadway from the applicant free of charge.

Deliberation

03:02:42 The Commissioners had no concerns with the proposed development.

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 C-1

On a motion by Commissioner Proffitt, seconded by Commissioner Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, Compliance with **Guideline 1 (Community Form), Guideline 2 (Centers) and Guideline 3 (Compatibility)** has been found for this proposal. The proposal site lies within an existing activity corridor and at the intersection of primary collector, major arterial, and local level streets. It is surrounded on all sides by non-residential uses except to the west at the rear of the lot. Samples of the surrounding non-residential uses are retail, restaurant, and daycare. Since the site is located along a high activity corridor, there should be very few nuisances to surrounding areas and landscaping and setbacks will be applied along the rear of the lot to protect the single family residential use to the west. The proposal will fill in the gap between two previous re-zonings to the north and south which were re-zoned to C-2, C-1, and OR-3, showing that this corridor area has a history of being deemed appropriate for an increase in the intensity of land uses. The applicant has provided renderings of the building and cross-access to the development to the south to further the site's compatibility and provide access to the site by multiple modes of transportation.

WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 4 (Open Space)** as there are no open space requirements for this proposal and there are no natural features to integrate into the development; and

WHEREAS, the Louisville Metro Planning Commission further finds There are no natural areas or habitats to integrate on this site nor are there any historic landmarks. Therefore, the proposal complies with **Guideline 5 (Natural Areas and Scenic and Historic Resources)**

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WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 7 (Circulation)**, **Guideline 8 (Transportation Facility Design)**, and **Guideline 9 (Bicycle, Pedestrian and Transit)**. The site has been designed to allow for the relocation of Old Bardstown Road and the owner will dedicate right-of-way for said relocation upon the request of Public Works. The cross connection with the lot to the south will be provided to help improve vehicular traffic for the surrounding sites. At the time of the relocation, a pedestrian connection from the new sidewalk will be provided to the entrance of the building. The site provides easy access by all forms of transportation as it is a short walking distance to Bardstown Road for the bus route and bicycle parking racks will be installed. The existing street grid pattern will not be affected

WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 10 (Flooding and Stormwater)**, **Guideline 12 (Air Quality)**, and **Guideline 14 (Infrastructure)** as the Air Pollution Control District and MSD have approved the proposal. All required infrastructure for utilities will be provided or already exist.

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby recommends to the legislative body of Louisville Metro Government that the requested Change in zoning from R-4 to C-1 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Turner, Jarboe and Butler

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Brown, White and Peterson

ABSTAINING: Commissioner Kirchdorfer.

Waiver of LDC Section 5.9.2.b.i

On a motion by Commissioner Proffitt, seconded by Commissioner Butler, the following resolution was adopted.

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WHEREAS, the Louisville Metro Planning Commission finds the waiver will not adversely affect adjacent property owners because a pedestrian connection is provided from Hillock Drive. Once the Old Bardstown Road relocation occurs, the owner will be required to provide the pedestrian connection at that time per the binding elements.

WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not violate **Guideline 7 (Circulation)**, **Guideline 8 (Transportation Facility Design)**, and **Guideline 9 (Bicycle, Pedestrian and Transit)** of Cornerstone 2020. It is effectively a temporary Waiver since the pedestrian connection will be provided once Old Bardstown Road is relocated. Another connection is provided from Hillock Drive.

WHEREAS, the Louisville Metro Planning Commission further finds the extent of waiver of the regulation the minimum necessary to afford relief to the applicant because this is the only sidewalk requested to be eliminated.

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the applicant would be required to build a sidewalk that will only soon have to be torn out.

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Waiver** of LDC section 5.9.2.b.i to not provide the required pedestrian connection from the building entrance to the Old Bardstown Road sidewalk.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Jarboe, Turner and Butler

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Brown, White and Peterson

ABSTAINING: Commissioner Kirchdorfer

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Development Plan and Binding Elements

On a motion by Commissioner Proffitt, seconded by Commissioner Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The site is already built out and there are no natural resources on the site to conserve.

WHEREAS, the Louisville Metro Planning Commission further finds Transportation Review has approved the proposal's transportation facilities.

WHEREAS, the Louisville Metro Planning Commission further finds no open space is required on this site.

WHEREAS, the Louisville Metro Planning Commission further finds MSD has approved the drainage facilities for the site.

WHEREAS, the Louisville Metro Planning Commission further finds, The site design is compatible with existing commercial development in the area. The building will be located to allow for the future relocation of Old Bardstown Road. The required screening and landscaping will be provided along the rear of the site to help mitigate any potential nuisances to the abutting single family residences.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request.

WHEREAS, The Louisville Metro Planning 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; therefore be it

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.

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2. 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.
3. 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 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; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
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.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 20, 2014 Planning Commission meeting.

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7. Upon the development or redevelopment of abutting properties, a unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout abutting 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 the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the abutting property to be developed.
8. The proposed easternmost access point from the site to Hillock Drive is to be closed and a new access point to the site be made from the site to the relocated Old Bardstown Road as shown on the development plan. The owner shall then also provide a pedestrian access from the front of the building to the abutting sidewalk along relocated Old Bardstown Road and striping through the VUA.
9. The area identified for future right-of-way for the relocation of Old Bardstown Road, as shown, shall be dedicated to public use by minor plat or deed at the applicant's expense within 60 days of request by the Director of Louisville Metro Public Works.
10. A 25 ft LBA shall be provided along the rear property line with an 8 ft high privacy fence and tall shrubs.
11. A 15 ft LBA shall be provided along the south property line with an 8 ft high privacy fence and tall shrubs to where the day care ends and the office property begins.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Turner and Butler

NO: Commissioner Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Brown, White and Peterson

ABSTAINING: Commissioner Kirchdorfer

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CASE NO. 14ZONE1032

Request: Change in zoning from M-2, Industrial to EZ-1, Enterprise Zone, Detailed District Development Plan and Binding Elements, and Waivers

Project Name: Three Winks, LLC

Location: 317-321 Winkler Avenue, 2621 S. 4th Street

Owner: The First Capital Bank of Kentucky
293 Hubbards Lane
Louisville, KY 40207

Applicant: Three Winks, LLC
10817 Bluegrass Pkwy
Louisville, KY 40299

Representative: Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy, 2nd Floor
Louisville, KY 40223

Milestone Design Group, Inc.
108 Daventry Lane, Suite 300
Louisville, KY 40223

Jurisdiction: Louisville Metro

Council District: 6-David James

Staff Case Manager: David B. Wagner, 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:

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03:18:23 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy, Louisville, KY 40223
Mark Madison, 108 Daventry Lane, Suite 300, Louisville, KY 40223
Ron Kuster, 10817 Bluegrass Pkwy, Louisville, KY 40299

Summary of testimony of those in favor:

03:25:32 Mr. Bardenwerper gave a power point presentation of the proposed development.

The following spoke in opposition to this request:

No one.

Rebuttal

None

Deliberation

03:38:18 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.

Zoning Change from M-2 to EZ-1

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of GUIDELINE 1: COMMUNITY FORM. The community form for this area is the Traditional Workplace Form District; as such, it contemplates a mixture of uses, which the EZ-1 District allows; commercial, industrial and multi-family housing is deemed appropriate; by virtue of the proximity of this site to the U

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of L Belknap Campus, this site is especially appropriate for the intended uses, which are retail student housing; and

WHEREAS, this application complies with **GUIDELINE 2 – CENTERS**. This Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline to promote the efficient use of land and investment in existing infrastructure, lowering utility costs by reducing need for utility extensions, by providing an opportunity for a mixture of residential development with other land uses, by providing an opportunity for the growth and enhancement of neighborhood centers, by encouraging vitality and a sense of place in neighborhoods and by encouraging commercial revitalization in redeveloping areas; also, this application is in an already developed area where the infrastructure already exists, where utilities are already located, where students can live in close proximity to the University of Louisville Belknap Campus, where a mixture of uses exist, and this site also includes a possibility of retail and restaurant combined with student housing, where an existing activity center is evident at this corner, and where the end result is a serious contribution to the continuing revitalization of this redeveloping area; and

WHEREAS, this application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 for these reasons: this proposal is an activity center located within a form district that is appropriate for activity center uses; it is also a combination of non-residential and residential use which the Comprehensive Plan highly commends; it involves the location of more commercial use in an area where commercial activity already exist; it also involves compact mixed development, because residential is proposed above the commercial uses on the lower floors; the uses that are proposed are compatible with the commercial and student housing uses located within the area; multi-family is already located next door in the brand new U of L-affiliated student housing building; also, this redevelopment of the corners of Fourth Street and Winkler Avenue are consistent with the kind of development that is already occurring nearby; and utilities exist at this site along the existing streets; transit and sidewalks are also available in the area; and

WHEREAS, this application complies with **GUIDELINE 3 – COMPATIBILITY**. this Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline which are to allow a mixture of land uses and densities as long as they are designed to be compatible one with the other, to prohibit the location of sensitive land uses where noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished, and to preserve the character of existing

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neighborhoods; this application addresses these Intents of this Guideline because there are multiple uses proposed in this application (retail with student housing); also these uses are already evident in the area so they will not violate acceptable standards for noise, lighting, odors, etc which are already evident on properties adjoining this site; furthermore, redevelopment of this kind helps to preserve and revitalize in a neighborhood, as it will this one; and

WHEREAS, this application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14,15, 20, 21, 22, 23, 24 and 28 of this Guideline for these reasons; and

WHEREAS, as to the issue of building type and building materials, this application involves a reuse of existing buildings; the buildings will be rehabilitated in the process, such that this is not an introduction of something new but rather of something better; building materials will be consistent with those already evident in the area; as to the residential uses, the small number of apartments proposed above the retail are compatible with the large student housing complex under construction directly to the north; and the non-residential uses proposed are consistent with the restaurants and retail also located next door and close by; although odors are common in restaurants, and noise are not unfamiliar in student housing situations, the neighbors to this property already involve those circumstances; of course noise will be limited by virtue of any noise ordinance, plus the fact that the owners of this property will be able to manage who lives in these facilities; if residents do not abide by the owners' rules and regulations, they will be evicted; lighting will be compatible with the Land Development Code Regulations in this regard; visual quality will be improved because the buildings are being rehabilitated; the apartments will be utilized probably by students, thus the apartments will not necessarily be of interest to the elderly or people with disabilities, although they will need to meet, in design, any laws with respect to same; this is an existing activity center; because the property is going to be rezoned EZ-1 (or possibly commercial if the Planning Commission or Metro Council prefer that instead) significant buffers against similar uses are not required; however, the setbacks are appropriate and on-site parking is provided; and

WHEREAS, this application complies with **GUIDELINES 4: 5: NATURAL AREAS & HISTORIC RESOURCES &GUIDELINE 13: LANDSCAPE CHARACTER.** These Guidelines and the Intents relating thereto to the extent that there are applicable; this site will not require open space given its location and the form district; to the extent that the buildings being rehabilitated as part of this application are older, especially the eastern most building, one could consider that a renovation of an historic resource; and to the extent required landscaping will

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be provided where none is presently evident; and

WHEREAS, this application also complies with Policies 2 and 4 of Guideline 5 and Policies 1, 2 and 4 of Guideline 13; that is to say that this application does involve the rehabilitation of an older building that has historic characteristics; those will be preserved and rejuvenated; there are interesting architectural features on the eastern-most building that are in a state of decay and will become more evident as they are rebuilt and restored; and landscaping will meet requirements of the Land Development Code; and

WHEREAS, this application complies with **GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY**. This Guideline of the Comprehensive Plan in that the Intents of it are to ensure the availability of necessary usable land to facilitate commercial, industrial and residential development; to reduce public and private cost for land development; and to ensure that people have access to goods and services; this application meets these Intents of this Guideline in that this is a under-utilized piece of land in a redeveloping portion of Metro Louisville where infrastructure already exists and does not need to be extended; also, by promoting the idea of retail use on portions of this property and proximity to existing housing, that will provide for the possibility of pedestrian access; and

WHEREAS, this application also complies with Policies 2, 3, 4, 5, 6, and 11 of this Guideline for these reasons: this site has good access along Third and Fourth Streets at Winkler; investment in this case is in an older neighborhood; if any of this site is industrially utilized, again, industry already exists in this area, as evident, among other things, by the EZ-1 zoning that exists nearby and as is proposed for this site; this does involve a redevelopment of an existing under-utilized site and somewhat depilated buildings; this is already an activity center evident at Third and Fourth Streets and Winkler Avenue; and what is proposed is very much an adaptive reuse; and

WHEREAS, this application complies with **GUIDELINES 7: CIRCULATION & S:TRANSPORTATION FACILITY DESIGN**. These two Guidelines of the Comprehensive Plan because it addresses the Intents which are to provide for safe and proper functioning of the local street networks, to ensure that new developments do not exceed the traffic carrying capacity of those streets, to ensure that internal and external circulation for the proposed development works, to address air quality, and provide an efficient and safe attractive system of roadways, transit and sidewalks; and

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WHEREAS, this application is in the heart of South Louisville where sidewalks and street systems are designed to accommodate development of these kinds; access points already exist; sidewalks are available throughout the area; transit is located nearby; and

WHEREAS, this application also complies with Policies 2, 3, 4, 10, 11, 12, 13, 14, 15 and 16 of Guideline 7 and Policies 4, 7, 9, 10 11 and 12 of Guideline 8; that is because this is a reuse of an existing site which involves two buildings with shared access points and shared parking; sidewalks exist; road capacity is not over-utilized; the types of uses at these sites will encourage pedestrian access because they are located near the University of Louisville Belknap Campus where tenants of these apartments are likely to spend much of their time as students; and any retail and restaurants located in these buildings are likely to be frequented by U of L students, especially those residing in these buildings and in the new student housing complex under construction directly to the north; also, access to this site and circulation through it must be approved by the Metro Transportation Planning staff, which, prior to docketing of this proposal for LD&T and full Planning Commission review, stamp this development plan as preliminarily approved based on its design criteria for access, internal circulation, site distances and so on; and

WHEREAS, this application complies with **GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT**. This Guideline of the Comprehensive Plan because it addresses the Intents and Policies 1, 2, 3, 4 and 5 of this Guideline in that sidewalks are located along adjoining streets; furthermore, students who reside in the proposed apartments are likely to walk to school at U of L; also U of L students living here and nearby in the student housing complex to the north are likely to frequent by foot and bicycle the retail proposed for this site; and transit is available along Third and Fourth streets; and

WHEREAS, this application complies with **GUIDELINES 10: STORMWATER MANAGEMENT; 11: WATER QUALITY; AND 12: AIR QUALITY**. These environmental Guidelines of the Comprehensive Plan because the Intents of these Guidelines are addressed by virtue of the fact that this application involves rehabilitation of existing buildings where storm water is already handled through existing storm water systems, where water quality guidelines will be met as required, and where air quality is taken into account by virtue of the fact that students will be able to locate within walking distance of University of Louisville Belknap Campus; and

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WHEREAS, specifically, this application complies with Policies 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11 and Policies 1, 2, 3, 6 and 8 of Guideline 12; that is because, as stated, storm water in an already developed area like this is handled through the existing drainage system; whatever added improvements are needed will be provided; water quality measures will be addressed also as required by local regulation; and air quality is addressed by virtue of the fact that people who live here, notably students, are able to live in close proximity to the University of Louisville, the school where residents of these apartments are likely to attend; and

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby recommend to the legislative body of Louisville Metro Government that the requested Change in zoning from M-2, Industrial, to EZ-1, Enterprise Zone, on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

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Waiver #1 South Lot Line of Building A

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. Building A was built on the property line and there is no room for plantings or screenings along this lot line.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The abutting property to the south and Building A were developed properties before this request and did not provide areas for landscaping or open space. There is no room to provide landscaping or screening and the abutting sites have both been retail uses which would not normally require buffering.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the there is no area available to provide the required buffering and plantings without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2.4 of the Land Development Code to waive the 15' LBA and all planting/screening materials along the south lot line.

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The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #2 North & West Lot Lines of Building A

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. The building and parking were built on the property line and due to the abutting alleys and streets there is no room for plantings or screenings along this lot line.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 4 (Open Space), Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The building and parking were previously built on the lot lines and did not provide areas for landscaping or open space. There is no room to provide landscaping or screening due to the abutting alleys and streets along the lot lines.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there is no area available to provide the required buffering and plantings without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning 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; therefore be it

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2 of the Land Development Code to waive the 5 ft VUA LBA and all planting/screening materials along the north & west lot lines.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and white

ABSTAINING: No one.

Waiver #3 North, South, & West Lot Lines of Building B

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. The building and parking were built on the property line and due to the abutting alleys and streets there is no room for plantings or screenings along this lot line

WHEREAS, the Louisville Metro Planning Commission further finds The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The building and parking were previously built on the lot lines and did not provide areas for landscaping or open space. There is no room to provide landscaping or screening due to the abutting alleys and streets along the lot lines.

WHEREAS, the Louisville Metro Planning Commission further finds The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

WHEREAS, the Louisville Metro Planning Commission further finds The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the

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there is no area available to provide the required buffering and plantings without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2 of the Land Development Code to waive the 5 ft VUA LBA and all planting/screening materials along the north, south, & west lot lines.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #4 of all required ILA and plantings on Building A & Building B Lots

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. The parking was previously built at its current location and no ILA was previously provided.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The parking was previously built at its current location without any ILA and no open space is required for this proposal.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

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WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there is no area available to provide the required ILA without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2 of the Land Development Code to waive all required ILA and plantings on building A and building B lots.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Development Plan and Binding Elements

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The site is already built out and there are no natural resources on the site to conserve.

WHEREAS, the Louisville Metro Planning Commission further finds, Transportation Review has approved the proposal's transportation facilities.

WHEREAS, the Louisville Metro Planning Commission further finds, No open space is required on this site.

WHEREAS, the Louisville Metro Planning Commission further finds, MSD has approved the drainage facilities for the site.

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WHEREAS, the Louisville Metro Planning Commission further finds, The site design is compatible with existing commercial development in the area. The existing buildings will remain as is with cosmetic improvements. The required screening and landscaping cannot be provided do the existing built environment and parking will remain located along the sides of the buildings.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request.

WHEREAS, The Louisville Metro Planning 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; therefore be it

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, 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 legal instrument shall be recorded consolidating the Building B lots into one lot. A copy of the recorded instrument shall be submitted to

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the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

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. A legal instrument providing for the long-term use of the off-site parking spaces, as shown on the approved general district development plan and in accordance with Section 9.1.5 Off-Site Parking, shall be submitted and approved by the Planning Commission legal counsel and recorded in the County Clerk's office. 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.
6. No M-3, Industrial zone uses shall be permitted on this site.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

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CASE NO. 14ZONE1029

Request: Change in Zoning from R-7 to C-1; Variance and Land Development Code Waivers

Project Name: Dollar General
Location: 1201 Dixie Hwy

Owner: The Harold and Sue Smith Living Trust Hoagland Real Estate, LLC

Applicant: Susan Cox Development, LLC

Representative: Wyatt, Tarrant & Combs

Jurisdiction: Louisville Metro
Council District: 6 – David James
Staff Case Manager: Christopher Brown, 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:

03:44:30 Chris Brown discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Wyatt, Tarrant & Combs; 500 W Jefferson St., Suite 2800; Louisville, KY 40202

Summary of testimony of those in favor:

03:59:50 Cliff Ashburner discussed the proposal including the building renderings and how they worked with staff of Planning & Design, TARC and Metro Public Works to revise the proposal. Mr. Ashburner also mentioned that the alley closure associated

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with this proposal is scheduled to be heard by the Development Review Committee of the Planning Commission on December 3, 2014, and the Planning Commission on December 4, 2014.

The following spoke in opposition to this request:

No one

Summary of testimony of those in opposition:

No one

The following spoke neither for nor against the request:

No one

Rebuttal

None

Deliberation

04:18:25 The Planning Commission generally expressed that they did not have any issues with the requests.

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-7 to C-1

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that SC Development, LLC is applying for a change in zoning for two parcels of property currently zoned R-7 along Oak Street, just to the East of Dixie Highway. The overall development site includes commercially zoned (C-1) property at the southeast corner of Oak Street and Dixie Highway. The overall development also includes the proposed closure of an unnamed alley that runs north/south between the currently-zoned commercial section of the

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overall development and the property proposed to be rezoned. The applicant will maintain a public access between Oak Street and the alley to the south of the subject property and will use some of the R-7 property for a landscaped buffer. Due to the compact nature of the site, the applicant is seeking a landscape waiver along the southern property line. The applicant is also seeking two design waivers: (a) to allow the corner entrance to be at the southwest corner of the building as opposed to the northwest corner and (b) to reduce the amount of clear doors and windows required.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 1, Form Districts. The subject property is in the Traditional Marketplace Corridor and the Traditional Neighborhood Form Districts. Both of these form districts suggest the maintenance of alleys, rear or side parking, buildings oriented and pulled up to the street and commercial uses that serve the surrounding neighborhood. The proposed development is for a 9,000 square foot Dollar General store. Dollar General stores carry a variety of products used on a regular basis, clearly a neighborhood serving use. The proposed development plan includes a building on the right of way line of Oak Street and Dixie Highway, with side parking and a relocated and improved public access in place of the proposed closed alley. For these reasons, the proposed development complies with Guideline 1.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 2, Centers. The proposed development complies with the intent of Guideline 2 and its Policies. The subject property is in an activity center, with abundant commercial property nearby. The property proposed to be rezoned is just to the east of the existing alley but has been partially vacant for many, many years. The eastern portion of the subject property will be used for access and buffering, not new building. The proposed development is compact in nature, is at the intersection of two collector or greater streets and blends the requirements of the Land Development Code and the development pattern in the area. The proposed Dollar General store will serve the needs of nearby residents and will add a retail choice to the California neighborhood that doesn't currently exist.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 3, Compatibility. The proposed development complies with the intent of Guideline 3 and its Policies. The proposed building will be similar in size to other neighborhood shops in the area, and will be oriented toward the street. The proposed development should not have any adverse impact on surrounding residential properties, including those related to noise, light or traffic. The applicant's proposed building will use building materials that can be found in surrounding properties, including block, brick and accent materials. The proposed development will provide a 15' buffer to the east including an 8' tall fence. The landscape buffer to the south adjacent to the

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church will be 5' wide but trees will be provided in this area as well as in the interior landscape areas directly adjacent to it.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 4, Open Space. The proposed development complies with the intent of Guideline 4 and its Policies. The subject property is mostly vacant and contains one home that will be removed as part of the proposed development. The property contains few trees and no useful open space. When developed, the property will contain a landscape buffer almost as wide as many residential lots adjacent to the residence to the east and will contain tree canopy that exceeds the requirement by one-third.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 5, Natural Areas and Scenic and Historic Resources. The proposed development complies with the intent of Guideline 5 and its Policies. There are not any natural areas or historic or scenic resources on the subject property. But the redevelopment of properties in the urban core of the city helps to preserve the broader neighborhood by providing a service not currently available in the immediate area.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 6, Economic Growth and Sustainability. The proposed development complies with the intent of Guideline 6 and its Policies. The proposed development will redevelop three vacant lots in the California neighborhood, will provide trees where there are none and will provide an area for a TARC stop to be located along Dixie Highway. The proposed Dollar General store is generally in line with both the Traditional Marketplace and Traditional Neighborhood form district guidelines for site and building design in that it is a single story building pulled up to the right of way at the corner.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 7, Circulation and Guideline 9, Bicycle, Pedestrian and Transit. The proposed development complies with the intent of both of these Guidelines and their respective Policies. The subject property is at the corner of two busy roads, West Oak Street and Dixie Highway. West Oak Street is one-way westbound, while Dixie Highway carries traffic north and south. Dixie Highway is also a busy transit corridor. The proposed development will provide a small right of way dedication for a new TARC stop near the corner. The proposed development will also provide a 24' wide public access easement just to the east of the current 15' alley location, providing better access for those using the alley system in the area. The proposed development will also provide sidewalks to allow for pedestrian access to the site from surrounding

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properties. The parking lot has been designed to allow for safe truck maneuvering and unloading, as well.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 10, Flooding and Stormwater and Guideline 11, Water Quality. The proposed development complies with the intent of both of these Guidelines and their respective Policies. The subject property is in an older part of the city that is almost completely developed. The subject property will use green infrastructure in the form of pervious pavement for some of its parking to handle surface water and allow it to infiltrate the ground on-site, instead of using the combined sewer system. The infiltration should also help with water quality.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 12, Air Quality. The proposed development complies with the intent of Guideline 12 and its Policies. The subject property is in an urban setting, where transit is heavily used. The proposed development contains a right of way dedication for a new TARC stop (where TARC will supply a shelter) and improvements to sidewalks along Oak Street and Dixie Highway to encourage pedestrians to visit the planned store. The proposed development is also planned with tree canopy that exceeds the requirement of the Land Development Code by one-third, addressing both heat island and air quality concerns.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 13, Landscape Character. The proposed development complies with the intent of Guideline 13 and its Policies. The proposed development will include approximately 27% tree canopy, as opposed to 20% required. And the landscape buffer area to the east will be significant compared to the current condition.

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with all other applicable Guidelines and Policies of the Comprehensive Plan.

Therefore, be it **RESOLVED**, that the Louisville Metro Planning Commission does hereby recommend to the legislative body of Louisville Metro Government that the requested Change in zoning from R-7, Multi-Family Residential, to C-1, Commercial, on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

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ABSTAINING: No one.

Variance #1: Variance from Chapter 5.5.A.2 of the Land Development Code to allow the building to exceed the 0' setback along West Oak Street at the intersection

WHEREAS, the Louisville Metro Planning Commission finds the applicant, SC Development, LLC, ("SC") is proposing to develop the property at the Southeast corner of Dixie Highway and Oak Street with a Dollar General store. The proposed development plan shows the building pulled up to the corner with its entrance, however, on the Southwest corner of the building. Because the entrance is not at the intersection itself and because the intersection creates an obtuse angle on the subject property, SC is seeking a variance to allow the proposed building to be more than 0' from the Dixie Highway right of way.

WHEREAS, the Louisville Metro Planning Commission further finds the variance will not adversely affect the public health, safety or welfare. The variance will allow for the construction of a rectangular building on a site that is not itself rectangular. SC is also proposing a TARC easement within the small triangle created by the division of the right of way line and the West face of the proposed building.

WHEREAS, the Louisville Metro Planning Commission further finds the variance will not alter the essential character of the general vicinity. Near the subject property, there are sites where buildings follow the right of way line, sites where buildings are set back behind parking areas and residential sites with yards along the street. In spite of the mixed designs in the area, the proposed development plan meets the intent of the Traditional Marketplace Form District.

WHEREAS, the Louisville Metro Planning Commission further finds the variance will not cause a hazard or nuisance to the public. The small triangle created by the variance will allow for a better entrance, a TARC stop and a wider sidewalk area, creating an amenity for the public, not a hazard or nuisance.

WHEREAS, the Louisville Metro Planning Commission further finds the variance will not allow an unreasonable circumvention of the requirements of the zoning district regulations. The setback requirements in this form district are designed to create an walkable, urban streetscape. Here, SC has done so but done it in a way that will allow for the development of a rectangular building while also providing an active street-facing design that meets the intent of the regulations.

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WHEREAS, the Louisville Metro Planning Commission further finds The variance arises from the obtuse angle of the intersection of Dixie Highway and Oak Street. The intersections non-perpendicular shape does, however, provide the opportunity for a TARC stop that will augment the TARC network in the area.

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would require the applicant to build to the right of way line, creating an oddly shaped building and eliminating the TARC easement the applicant is providing.

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances of the variance are the result of the shape of the site at the location of the building entrance where the parking area and right of way meet. SC believes the proposed design will allow for very good access for all of its customers, many of whom come by car.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Variance** from Chapter 5.5.A.2 of the Land Development Code to allow the building to exceed the 0' setback along West Oak Street at the intersection.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #1: Waiver from Chapter 5.5.1.A.1.b of the Land Development Code to not provide an entrance along both street frontages or corner entrance at ROW intersection

WHEREAS, the Louisville Metro Planning Commission finds the requested waiver of Section 5.5.A.1.b will not adversely affect adjacent property owners. While the intent of Section 5.5.A.1.b is to provide greater accessibility to pedestrians and mass transit commuters, the location of the proposed development will be accessed far more frequently by vehicular transportation. As a result, the applicant desires for the primary entrance to be oriented toward the parking lot rather than at the corner of two busy roads, West Oak Street and Dixie Highway. Furthermore, the applicant believes this location is much safer for its customer base. While a waiver is necessary, locating the entrance on the southwest corner of the building as opposed to the northwest corner

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should not negatively impact any of the adjacent property owners and, if anything, will help promote the safety of those who reside or work in the neighborhood. As a result, the requested waiver will not adversely affect the adjacent property owners.

WHEREAS, the Louisville Metro Planning Commission further finds as more fully set forth in the justification statement submitted with the proposed change in zoning, the requested waivers comply with the Cornerstone 2020 Comprehensive Plan. The proposed use is consistent with the Traditional Marketplace Corridor and the Traditional Neighborhood Form Districts in that it is a single story building pulled up to the right of way at the corner of Dixie Highway and Oak Street and will offer a commercial use that serves the surrounding neighborhood. In addition, the subject property is in an activity center, with abundant commercial property nearby. The proposed development will provide a small right of way dedication for a new TARC stop near the corner. Further, the proposed development will provide a 24 foot public access easement just to the east of the current 15 foot alley location, providing better access for those using the alley system in the area. Finally, the proposed development will also provide sidewalks to allow for pedestrian access to the site from surrounding properties and the parking lot has been designed to allow for safe truck maneuvering and unloading, as well. For all of the foregoing reasons, the requested waivers will not violate the Cornerstone 2020 Comprehensive Plan.

WHEREAS, the Louisville Metro Planning Commission further finds the requested waivers are the minimum necessary to afford relief to the applicant because the proposal is for the development of a Dollar General store on a mostly vacant parcel of property. The proposed development will greatly benefit the neighborhood not only by redeveloping a long-standing undeveloped parcel of property, but also by providing a retail business that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. Finally, in order to develop the site as proposed in a cost efficient manner, while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested design waivers are required.

WHEREAS, the Louisville Metro Planning Commission further finds absent the requested waivers, the applicant would be deprived of the reasonable use of the land. The applicant is committed to developing a retail store that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. However, in order to develop this store in a cost effective manner and do so while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested design waivers are required. Therefore, the strict application of the provisions of each regulation would prevent the applicant from developing the property as proposed.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Waiver** from Chapter 5.5.1.A.1.b of the Land Development Code to not provide an entrance along both street frontages or corner entrance at ROW intersection.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #3: Waiver from Chapter 5.6.1.A.1 of the Land Development Code to provide less than the required 75% animating features

WHEREAS, the Louisville Metro Planning Commission finds the requested waiver of Section 5.6.1.C will not adversely affect the adjacent property owners. Although a reduction in the percentage of wall surfaces at street level that consist of clear glass and doors to below 50% is requested, the applicant's proposed building will use building materials that can be found in surrounding properties, including block, brick and accent materials. Furthermore, when developed, the property will be similar in size to other neighborhood shops in the area, and will be oriented toward the street. Therefore, the requested waiver will not adversely affect the adjacent property owners.

WHEREAS, the Louisville Metro Planning Commission further finds as more fully set forth in the justification statement submitted with the proposed change in zoning, the requested waivers comply with the Cornerstone 2020 Comprehensive Plan. The proposed use is consistent with the Traditional Marketplace Corridor and the Traditional Neighborhood Form Districts in that it is a single story building pulled up to the right of way at the corner of Dixie Highway and Oak Street and will offer a commercial use that serves the surrounding neighborhood. In addition, the subject property is in an activity center, with abundant commercial property nearby. The proposed development will provide a small right of way dedication for a new TARC stop near the corner. Further, the proposed development will provide a 24 foot public access easement just to the east of the current 15 foot alley location, providing better access for those using the alley system in the area. Finally, the proposed development will also provide sidewalks to allow for pedestrian access to the site from surrounding properties and the parking lot has been designed to allow for safe truck maneuvering and unloading, as well. For all of the foregoing reasons, the requested waivers will not violate the Cornerstone 2020 Comprehensive Plan.

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WHEREAS, the Louisville Metro Planning Commission further finds the requested waivers are the minimum necessary to afford relief to the applicant because the proposal is for the development of a Dollar General store on a mostly vacant parcel of property. The proposed development will greatly benefit the neighborhood not only by redeveloping a long-standing undeveloped parcel of property, but also by providing a retail business that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. Finally, in order to develop the site as proposed in a cost efficient manner, while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested design waivers are required.

WHEREAS, the Louisville Metro Planning Commission further finds absent the requested waivers, the applicant would be deprived of the reasonable use of the land. The applicant is committed to developing a retail store that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. However, in order to develop this store in a cost effective manner and do so while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested design waivers are required. Therefore, the strict application of the provisions of each regulation would prevent the applicant from developing the property as proposed.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Waiver** from Chapter 5.6.1.A.1 of the Land Development Code to provide less than the required 75% animating features.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #4: Waiver from Chapter 5.6.1.C.1 of the Land Development Code to not provide the required 50% clear glazing along both Dixie Highway and West Oak Street

WHEREAS, the Louisville Metro Planning Commission finds that the requested waiver of Section 5.6.1.C will not adversely affect the adjacent property owners. Although a reduction in the percentage of wall surfaces at street level that consist of clear glass and

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doors to below 50% is requested, the applicant's proposed building will use building materials that can be found in surrounding properties, including block, brick and accent materials. Furthermore, when developed, the property will be similar in size to other neighborhood shops in the area, and will be oriented toward the street; and

WHEREAS, the Commission further finds that the intent of Section 5.5.A.1.b is to provide greater accessibility to pedestrians and mass transit commuters, the location of the proposed development will be accessed far more frequently by vehicular transportation. As a result, the applicant desires for the primary entrance to be oriented toward the parking lot rather than at the corner of two busy roads, West Oak Street and Dixie Highway. Furthermore, the applicant believes this location is much safer for its customer base. While a waiver is necessary, locating the entrance on the southwest corner of the building as opposed to the northwest corner should not negatively impact any of the adjacent property owners and, if anything, will help promote the safety of those who reside or work in the neighborhood. As a result, the requested waiver will not adversely affect the adjacent property owners; and

WHEREAS, the Commission further finds that, as more fully set forth in the justification statement submitted with the proposed change in zoning, the requested waivers comply with the Cornerstone 2020 Comprehensive Plan. The proposed use is consistent with the Traditional Marketplace Corridor and the Traditional Neighborhood Form Districts in that it is a single story building pulled up to the right of way at the corner of Dixie Highway and Oak Street and will offer a commercial use that serves the surrounding neighborhood. In addition, the subject property is in an activity center, with abundant commercial property nearby. The proposed development will provide a small right of way dedication for a new TARC stop near the corner. Further, the proposed development will provide a 24 foot public access easement just to the east of the current 15 foot alley location, providing better access for those using the alley system in the area. Finally, the proposed development will also provide sidewalks to allow for pedestrian access to the site from surrounding properties and the parking lot has been designed to allow for safe truck maneuvering and unloading, as well; and

WHEREAS, the Commission further finds that the requested waivers are the minimum necessary to afford relief to the applicant because the proposal is for the development of a Dollar General store on a mostly vacant parcel of property. The proposed development will greatly benefit the neighborhood not only by redeveloping a long-standing undeveloped parcel of property, but also by providing a retail business that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. Finally, in order to develop the site as proposed in a cost efficient manner, while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested design waivers are required; and

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WHEREAS, the Commission further finds that, absent the requested waivers, the applicant would be deprived of the reasonable use of the land. The applicant is committed to developing a retail store that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. However, in order to develop this store in a cost effective manner and do so while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested design waivers are required. Therefore, the strict application of the provisions of each regulation would prevent the applicant from developing the property as proposed; and

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Waiver** from Chapter 5.6.1.C.1 of the Land Development Code to not provide the required 50% clear glazing along both Dixie Highway and West Oak Street.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #5: Landscape Waiver from Chapter 10.2.4 of the Land Development Code to reduce the required 10 ft LBA along the south property perimeter to 4.6 ft

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since appropriate screening and planting materials will be provided along the property perimeter; 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

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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 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 appropriate screening and planting materials will be provided along the property perimeter; 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 to allow adequate parking to be provided while shifting the building to provide additional ROW along West Oak Street. Appropriate screening and planting materials will be provided to meet the intent of the buffering; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the landscape buffer would reduce the parking to be provided on the site below the minimum required; and

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** from Chapter 10.2.4 of the Land Development Code to reduce the required 10 ft LBA along the south property perimeter to 4.6 ft.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

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NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #6: Landscape Waiver from Chapter 10.2.12 of the Land Development Code to allow required interior landscaping areas to exceed the 120' maximum distance regulation

WHEREAS, the Louisville Metro Planning Commission finds that the requested waiver for distance between ILAs within the parking area of the subject property will not adversely affect the adjacent property owners. Although a greater distance is provided adjacent to the proposed building, the distance requirement is met along the south property line and both ILAs are within 120' of the perimeter landscape area along the south property line; and

WHEREAS, the Commission further finds that Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 5 calls for standards to ensure the creation and/or preservation of tree canopy as a valuable community resource. The purpose of interior landscape areas is to break up large impervious areas and allow for a greater distribution of tree canopy coverage. The required amount of interior landscaping is being provided within the site; and

WHEREAS, the Commission further finds that the requested waivers are the minimum necessary to afford relief to the applicant because the proposal is for the development of a Dollar General store on a mostly vacant parcel of property, one that currently contains no existing interior landscaping or buffers. As a result, the applicant will provide the required number of ILAs, which will only serve to benefit the surrounding neighborhood. Furthermore, the proposed development incorporates a tree canopy in excess of the requirements set forth in the LDC. Finally, in order to develop the site as proposed while providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested landscape waivers are necessary. ; and

WHEREAS, the Commission further finds that absent the waivers the applicant would be deprived of the reasonable use of the land. The applicant is committed to developing a retail store that carries a variety of products that are used on a regular basis by those who reside in the neighborhood. However, in order to develop this store in a cost-effective manner and do so while also providing sufficient parking, appropriate access, and greater mobility for vehicular maneuvering, the requested landscape waiver

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is required. Therefore, the strict application of the provisions of the regulation would prevent the applicant from developing the property as proposed; and

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** from Chapter 10.2.12 of the Land Development Code to allow required interior landscaping areas to exceed the 120' maximum distance regulation

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Development Plan and Binding Elements

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that there does 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the Commission further finds that open space requirements for the proposed development will be provided per the Land Development Code; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate

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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 will be provided to screen adjacent properties. Buildings and parking lots will meet appropriate setbacks. The screen wall for the parking area is being provided along the roadway; 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 with the exception of the requested waivers and variance which meet their standard of review; and

WHEREAS, The Louisville Metro Planning 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; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **ON CONDITION** that the screen wall be added to the development plan along Dixie Hwy since that waiver was withdrawn by the applicant, 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 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 9,200 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

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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. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to obtaining any permits. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. 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; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. An alley closure approval for the interior unnamed alley shall be approved prior to requesting a building permit.
 - e. 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 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.

PLANNING COMMISSION MINUTES
November 20, 2014

PUBLIC HEARING

CASE NO. 14ZONE1029

8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 20th, 2014 Planning Commission meeting.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

PLANNING COMMISSION MINUTES
November 20, 2014

PUBLIC HEARING

CASE NO. 14AMEND1003_TRANS

Case Number: 14AMEND1003

Project Name: LDC Round Two Text Amendments, Transportation

Agency Testimony:

04:31:00 Chris Brown suggested that this case be continued to a date certain.

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** case 14AMEND1003_TRANS to the December 18, 2014 Planning Commission hearing.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

PLANNING COMMISSION MINUTES
November 20, 2014

PUBLIC HEARING

CASE NO. 14ZONE1039

Request: Change in Zoning from C-1 to C-2; Revised Detailed District Development Plan
Project Name: OBC Lots C & D
Location: 9840 & 9850 Von Allmen Court
Owner: McMahan Group Ventures LLC
Applicant: Rory F. McMahan
Representative: Glenn Price
Jurisdiction: Louisville
Council District: 16 - Kelly Downard
Case Manager: Christopher Brown, Planner II

Agency Testimony:

04:33:02 Chris Brown said the applicant has requested to change the hearing date for this case. It was previously scheduled by the Land Development & Transportation Committee for the December 4, 2014 Planning Commission hearing.

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby schedule case 14ZONE1039 for the January 15, 2015 regular meeting of the Planning Commission.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

PLANNING COMMISSION MINUTES
November 20, 2014

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 5:40 p.m.



Chair



Planning Director

