

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**Project Name:** Jefferson Boulevard Apartments  
**Location:** 1253-1259 McCawley Road and 7489 Egypt Lane

**Owners:** Coxco Realty, LLC  
c/o William Flowers  
500 West Jefferson Street Suite 2000  
Louisville, KY 40202

**Applicant:** Lee Hasken – Faulkner Real Estate  
9625 Ormsby Station Road  
Louisville, KY 40223

**Representative:** William Bardenwerper  
Bardenwerper, Talbott & Roberts PLLC  
1000 North Hurstbourne Parkway Suite 200  
Louisville, KY 40223

**Engineer/Designer:** Kent Gootee  
Mindel, Scott & Associates  
5151 Jefferson Boulevard  
Louisville, KY 40219

**Project Area/Size:** 53.77 acres  
**Existing Zoning District:** EZ-1, R-7 and R-4  
**Jurisdiction:** Louisville Metro  
**Council District:** 24 – Madonna Flood  
**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.)

**Request:**  
Change in zoning from EZ-1, R-7 and R-4 to R-6 Multi-Family Residential;  
Variances, Waivers, and a Detailed District Development Plan.

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**Agency Testimony:**

02:41:44 David Wagner presented the case and showed a Power Point presentation, which included maps and photos of the site and surrounding areas (see audio-visual recording for detailed presentation.)

02:50:50 Regarding binding element #8, Commissioner Brown asked that this be revised to not prohibit cross-access based on future use (cross-access should be provided whether the use is residential or non-residential.) The words "for a non-residential use" were removed.

02:51:57 Commissioner Blake asked if the outlots would remain EZ-1. Mr. Wagner said they would. He said the southern boundary of the internal access drive (shown on the development plan) is actually the rezoning boundary. Everything to the south and west of that is proposed for R-6 zoning; everything north of the access drive would remain EZ-1.

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

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway Suite 200, Louisville, KY 40223

Kent Gootee and David Mindel, Mindel, Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Lee Hasken and Fred Faulkner, Faulkner Real Estate, 9625 Ormsby Station Road, Louisville, KY 40223

Scott Kremer, Studio Kremer Architects, 3258 Ruckreigel Parkway, Louisville, KY 40299

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

02:53:06 William Bardenwerper, the applicant's representative, gave a brief background about the proposal, and some development history of the area. He also showed a Power Point presentation which included aerial photos, the site plan, and photos of the site and the surrounding areas.

02:59:22 Kent Gootee, with Mindel Scott & Associates, described the proposed site plan in more detail (see audio-visual recording for detailed presentation.) He said the applicant has discussed the gated access portions of the development with the Fire Department to ensure compliance. He said that the LBA waiver requests will still allow the full plantings/landscaping

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

requirements to be met. All areas of the development are connected and accessible, and there are sidewalks throughout the development. A left turn lane will be created along McCawley Lane; that entrance will be gated as well.

03:04:05 Scott Kremer, architect, showed and discussed the proposed elevations. He discussed one of the variance requests (from a 35-foot maximum height to a 40-foot height.) The floor-to-ceiling heights of the units, besides providing a better living space, are also increasing the unit heights. He discussed the building materials and colors, as well as some other design elements.

03:06:16 Mr. Bardenwerper stated that height variances are frequently requested when doing three-story buildings, because he said the 35-foot height is "out of sync with current design standards" of higher ceilings and pitched roofs.

03:07:21 Fred Faulkner, representing Faulkner Real Estate, said his company has done much research into the potential of demand and occupancy of multi-family apartment projects. He said this project will represent about 50 million in investment. He said the research indicates about 95% occupancy, County-wide, for multi-family development.

03:09:18 Mr. Bardenwerper summarized the evidence and testimony presented by the applicant today and how they meet the Guidelines of the Comprehensive Plan (see applicant's compliance statement, on file.)

03:11:44 Commissioner Scheer asked about the impact on wildlife in the greenspace. Mr. Bardenwerper said some of the wooded habitat will be gone but there will still be a defined, protected area.

03:15:28 John Carroll, legal counsel for the Planning Commission, Commissioner Brown and Mr. Bardenwerper discussed the proposed change to binding element #8 (removing the reference to "non-residential use".)

03:16:36 For the record, Mr. Wagner added that Mr. Todd Blair had e-mailed him stating that he owns a nearby shopping center, and that he supports this proposal.

03:17:01 Commissioner Blake said he had seen a communication from a citizen discussing their concern about the tree loss.

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

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

No one spoke.

**The following spoke neither for nor against the request:**

No one spoke.

**Rebuttal:**

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

**Discussion:**

03:17:21 Commissioner White said if the applicant could satisfy the Corps of Engineers with their wetland mitigation proposal, then he was satisfied. Commissioner Brown said he liked the layout of the gates, and thought this was "a good way to isolate the community without looking restrictive". He said he thought this was a good use of the land. Commissioner Turner agreed that the land use seems appropriate. Commissioner Kirchdorfer said He also felt this will be a good addition to the area, and that the zoning is appropriate. Commissioner Blake said he felt this will be a good way to get a high-end development gated community in the Okolona area.

**An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the December 5, 2013 public hearing proceedings.**

**Zoning**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intent of **Guideline 1 – Community Form**. The subject property is located in 3 form districts – all in Suburban Forms which are characterized by residential industrial and commercial uses that vary from low to high density, from low to high intensity and that naturally blend compatibility into all new development plans; high density uses are supposed to be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and the Suburban Form Districts is also

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

supposed to contain diverse housing types in order to provide housing choice for differing ages and incomes; and

**WHEREAS**, the Commission further finds that proposed apartment community and retail/restaurant outlots for the subject property are appropriate because of its location along a major arterial in close proximity to shopping and employment centers and because community facilities are also located in near proximity with easy access to and from this site; and therefore, this application fully complies with this Guideline of the Comprehensive Plan; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 2 – Centers**. The intents of this Guideline are to promote the efficient use of land and investment in existing infrastructure; to lower utility costs by reducing the need for extensions; to reduce commuting time and transportation-related air pollution; to provide an opportunity for a mix of residential development that includes housing types and building styles that accommodate people of different ages and incomes and that are compatible with existing neighborhoods; and to provide vitality and a sense of place in neighborhoods and the community; this application complies with these Intents of this Guideline, among other reasons set forth herein below, because infrastructure such as roads, sewers and the like, are already available; because of the recent relatively new Jefferson Blvd. with easy access to the Jefferson Mall at the Outer Loop and to such major employers as Ford at Fern Valley Road, this proposed apartment community and there retail/restaurant outlots help with commuting distances and time and thus tends to improve the overall air quality by reducing commuting times and distances; and again, the proposed apartment community provides for the mixture of residential housing types that the Comprehensive Plan commends, and by “filling in the in-fill”, it helps create an overall newer and better larger neighborhood; and

**WHEREAS**, the Commission further finds that Policies 4 and 5 of this Guideline appear to apply to this application in that they encourage compact, mixed or compatible development and uses; this is a vacant site located near major shopping and employment centers where community facilities also exist; and larger though it is, this plan fills in the in-fill, so to speak and adds to the mixture of compatible uses; and

**WHEREAS**, the Commission further finds that Policy 12 encourages developments, larger but perhaps also of this size, to include a focal point; and the focal points will be the lake at the middle of the apartment portion of this development site and the pool and clubhouse; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**WHEREAS**, the Commission further finds that Policy 16 encourages alternative transportation modes; because these retail outlets and proposed apartment community are located along a major arterial, which presumably includes a bus route, and because bicycle facilities and sidewalks are also located in the area and at this community, this application also complies with this Policy of this Guideline; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 3 – Compatibility**. The intents of this Guideline are to allow a mixture of land uses and densities near each other as long as they are designed to be compatible with each other; to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors and similar nuisances could be violated or visual quality could be diminished; and to preserve the character of existing neighborhoods; this application complies with the Intents of this Guideline, among other reasons as set forth below, because it does indeed add a higher density residential use to a mostly non-residential area; as noted hereinabove, larger high density residential uses are encouraged along major arterials like Jefferson Blvd.; also, as shown in the images accompanying this application which were shown to neighbors at the neighborhood meeting, and the lay-out of this proposed apartment community saves significant green space and especially preserves a wetlands area on 22 acres to the west; both the commercial uses and apartment community will not produce noise, lighting, odors or similar nuisances that can't be fully rectified; and as a consequence of this and all else set forth hereinbelow, the character of the existing residential neighborhood is preserved, while nearby neighborhoods, shopping and employment centers are unaffected or enhanced; and

**WHEREAS**, the Commission further finds that Policies 1, 2 and 3 of this Guideline pertain to compatibility of different land and building design, use of building materials, densities, buffers and so on; once again, the images shown to neighbors at the recent neighborhood meeting and that accompany this application, demonstrate compatibility in a number of ways; as partly already stated, open space is included in this plan for 22 acres of wetlands preservation; that becomes easier when three-story, as opposed to just two-story, buildings are used, as they are here; that allows more land to accomplish other important objectives, such as preserving the wetlands; building materials will be high quality masonry products with use of other maintenance free materials, not vinyl siding; the designs of these buildings as shown on the accompanying images from the neighborhood meeting and this narrative explain residential compatibility; and nearby buildings are probably not built to the quality of that which has been proposed here; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**WHEREAS**, the Commission further finds that Policies 5, 6, 7, 8 and 9 of this Guideline pertain to impacts such as odors, traffic, noise, lighting and visual impacts; as partly already explained, the residential community would not ordinarily produce, and is not expected to produce, odors, noise, lighting and other visual impacts; traffic, as shown on the trip generation numbers accompanying this application, is also minimal, especially relative to the size and capacity of the new Jefferson Blvd; and impacts of these kinds from the proposed commercial outlots will be more fully addressed at the time of detailed district development plan submittal for these sites; and

**WHEREAS**, the Commission further finds that Policies 10, 11, 12, 13, 14, 15 and 16 of this Guideline all pertain to housing types, including density in appropriate areas, and the importance of appropriate/inclusive housing; the proposed apartment community, while intended to be market rate, is also expected to be “affordable enough” so that it doesn’t just market itself to the very highest income type renters; that is not to say that it is going to be a subsidized type rental housing community, but rather that, because there is a large range of rental needs within this community, this particular proposed apartment community is not expected to sacrifice quality; because of the location of this proposed apartment community near large acreage protected in perpetuity for wetlands preservation and because of some of the features of this site which will be preserved, it could be that, in the end, this apartment community attracts the highest demographic group of renters in the area; the market of course determines rental profile and rental rates; and naturally this community will welcome the elderly and handicapped; and

**WHEREAS**, the Commission further finds that Policies 21, 22, 23 and 24 of this Guideline are intended to deal with transitions, buffers, setbacks and minimizing the impacts of parking; as can be seen from the development plan filed with this application, especially the colored site plan that was part of the neighborhood meeting accompanying this application, parking is distributed throughout the apartment community and not located in just one central place and that helps to distribute the impacts of parking; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 4 – Open Space**. The Intent and Policies 1, 2, 3, 5, 6 and 7 of this Guideline all pertain to open space, natural resources and the design and maintenance of same; and the proposed overall site plan, as explained above, will include significant open space, for wetland preservation; and sidewalks and access should also be plainly visible on the plan submitted herewith; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 5 – Natural Areas, Scenic and Historic Resources**. The intent and Policies 1, 2, 3 and 4 of this Guideline pertain in a way similar as Guideline 4 to natural features and the like; and as already explained and as shown in the images contained in the neighborhood meeting presentation accompanying this application, the important natural features, notably wetlands, will be maintained and preserved for posterity; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 6 – Economic Growth and Sustainability**. The Intents of this Guideline are, among other things, to ensure the availability of necessary usable land to facilitate residential and commercial development and to reduce public and private cost of land development; the proposed apartment and retail outlots comply with this Guideline, as they do with all the others, in this instance because it is, as stated above, a new apartment community and added retail/restaurant outlots in a high trafficked area serving shopping and employment centers of major consequence; that will help address the significant rental demand that exists in Metro Louisville, and one would expect especially in an area already so predominated by intensive commercial and industrial development as this location; and because infrastructure is located at this site, most notably the recently built Jefferson Blvd, developing at this in-fill location helps reduce the public and private costs for land development; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guidelines 7 & 8 – Circulation and Transportation Facility Design**. The intents of these two Guidelines are to provide for safe and proper functioning of street networks; to ensure that new developments do not exceed the carrying capacity of streets; to ensure good internal and external circulation; to address congestion and air quality; to provide for safe and convenient accommodations with special mobility requirements of elderly and handicapped; and to provide an efficient, safe and attractive system of roadways, transit roads, sidewalks and pathways; the proposed apartment community and retail outlots address all of these Intents of these Guidelines, among other reasons because relatively the new Jefferson Blvd. which can easily accommodate the additional traffic from this proposed development; Jefferson Blvd. was built because of carrying capacity problems that previously existed, so to ensure a better means of access between two major arterials, i.e., Outer Loop and Fern Valley Road; locating an apartment community and new retail at the subject property, near the referenced shopping and employment centers, help move traffic to and from this site around the larger community in a relatively easy manner; Jefferson Blvd. surely is not at capacity, given that it is relatively new; the engineering firm (MSA) that has worked on this plan has also made certain that internal and external circulation and access are



**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

well designed within the parameters of Metro Works' transportation design standard; public transportation, to the extent it exists now or in the future along Jefferson Blvd., will have access to the site; and again, by locating this apartment community and retail/restaurant outlots at an in-fill site with easy access to arterials helps address transportation-related air quality issues in this community; furthermore, this plan has been designed to address any requirements of the elderly and physically challenged; the setback along Jefferson Blvd., the provision of sidewalks and the protection and preservation of open space help protect and enhance the public enjoyment of attractive corridors; and

**WHEREAS**, the Commission further finds that Policies 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Guideline 7 all pertain to specific design requirements to ensure transportation impact mitigation, appropriateness of the local transportation network, adequacy of parking and specific site design in accordance with Metro Works' Transportation design manual; the development plan accompanying this application, through the expert consulting engineering firm of MSA, demonstrates compliance with all of these Policies; and prior to docketing for LD&T review, this development plan received the preliminary stamp of approval from Metro Transportation Planning, thus demonstrating compliance with all of these Policies of this Guideline; and

**WHEREAS**, the Commission further finds that Policies 4, 5, 7, 8, 9, 10 and 11 of Guideline 8 raise many of these same issues; and so once again, the answer to the question of compliance is that the detailed development plan accompanying this application evidences compliance of all the Metro Works' transportation design manual requirements; moreover, as stated, this development plan received the preliminary stamp of approval from Metro Transportation Planning prior to docketing for LD&T for review; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 9 – Bicycle, Pedestrian Transit**. The Intents and Policies of this Guideline are to assure bicycle access, pedestrian safety and the accommodation of mass transit; and the development plan accompanying this application addresses all of those requirements; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 10 – Flooding and Stormwater**. The Intents and Policies of this Guideline are to assure that flooding and storm water are addressed; MSD has required the applicant and its engineers to include detention on the development plan, as shown; and as with Metro Transportation Planning, MSD also gave its preliminary stamp of approval to this development plan prior to docketing for LD&T review; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 11 – Water Quality**. The Intent and Policies of this Guideline are to assure that water quality is not degraded due to water pollution and erosion; the normal way that this Guideline is addressed is through construction plan and actual construction compliance with the soil erosion and sedimentation requirements of MSD; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 12 – Air Quality**. The Intents and Policies of this Guideline are to support an efficient land use pattern that reduces trip distances between work, shopping and home and to encourage development with densities that encourage mass transit; as stated above, because this application is for a large apartment community and retail/restaurant outlots along a major arterial with easy access to existing shopping and employment centers, this application addresses all of these Intents and Policies of this Guideline in exactly the way that it is supposed to; and by promoting high density and intensity at an in-fill location, such as this, near shopping and employment centers and along an arterial with easy access to other arterials, commuting times are reduced, and air quality benefits; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 13 – Landscape Character**. The Intents and Policies of this Guideline are to protect and enhance landscape character; this application complies with the Intents and Policies of this Guideline because it will fully comply with the Land Development Code and provide landscaping where required or needed to mitigate potential adverse impacts on adjoining properties; and

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of the Louisville Metro Council that the change in zoning from EZ-1, R-7 & R-4 to R-6 for Multi-Family Residential be **APPROVED**.

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**The vote was as follows:**

**YES: Commissioners Blake, White, Turner, Scheer, Kirchdorfer, and Brown.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, Proffitt, Tomes, and Jarboe.**

**ABSTAINING: No one.**

**Variance #1 - Variance to allow buildings to be 40' tall, exceeding the maximum allowed height of 35' (Land Development Code [LDC] Table 5.3.1)**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare because height is really an aesthetic concern, not a public health, safety or welfare one, and, given the location described above, height should not relate to any of these factors; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because this area contains a mix of mostly heavy industrial and commercial uses; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or a nuisance to the public because this area contains a mix of mostly heavy industrial and commercial uses, and the few single family residential uses nearby will be distance-separated and well screened and buffered; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the mostly heavy industrial and intense commercial uses predominate in the area; and

**WHEREAS**, the Commission further finds that the variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an area that is mostly predominated by heavy industrial and intense commercial uses; and

**WHEREAS**, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

would create an unnecessary hardship because the floors of the buildings or roof pitches would have to be shorter/flatter than modern day buildings normally are; or otherwise more land would be taken up with more buildings in order for the same number of units to be accommodated, and yet 20 plus acres are set aside for wet lands mitigation which is important; and

**WHEREAS**, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought but rather is a consequence of this location predominately near heavy industrial and intense commercial; and

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance of Land Development Code [LDC] Table 5.3.1 to allow buildings to be 40' tall, exceeding the maximum allowed height of 35'.

**The vote was as follows:**

**YES: Commissioners Blake, White, Turner, Scheer, Kirchdorfer, and Brown.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, Proffitt, Tomes, and Jarboe.**

**ABSTAINING: No one.**

**Variance #2 - Variance to allow Vehicular Use Area (VUA) to encroach into the required 25' rear yard setback along the future commercial lots (LDC Table 5.3.1)**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare because this is an issue of mitigating the impacts of the apartment buildings on the adjoining yet-to-be-determined commercial uses and of mitigating of those commercial uses on the apartment buildings which can be accomplished, to the extent that

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

impacts even exist, through imposition of this developers own screening and buffering devices; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because this variance is wholly internal to this overall development and has no impact whatsoever on any other nearby properties or nearby uses; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or a nuisance to the public because, as stated above, this variance is wholly internal to this overall development, has no impact whatsoever on any other nearby properties or nearby uses, and is capable of mitigation by this developer through its own mitigation measures particular to its own properties and tenants; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because, as stated above, this variance is wholly internal to this overall development, has no impact on other nearby properties or nearby uses, and therefore does not result in any kind of precedent as it relates to other developments and their impacts on independent, not codependent, projects and properties; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is, as stated, an overall mixed use plan conceived, and to be executed by, one master developer who has chosen to locate buildings and different uses on the overall site as it has taking into account whatever impact mitigation measures it decides to employ, if necessary, to assure an overall successful development of different but compatible uses; and

**WHEREAS**, the Commission further finds that 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 because the developer would have to move all sorts of buildings and facilities already laid out on this overall master plan development; and

**WHEREAS**, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought but rather is a result of an overall master plan development that does not negatively impact anyone else's property; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance of LDC Table 5.3.1 to allow Vehicular Use Area (VUA) to encroach into the required 25' rear yard setback along the future commercial lots.

**The vote was as follows:**

**YES: Commissioners Blake, White, Turner, Scheer, Kirchdorfer, and Brown.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, Proffitt, Tomes, and Jarboe.**

**ABSTAINING: No one.**

**Waiver to allow VUA to encroach into the required 35' Landscape Buffer Area (LBA) along the future commercial lots (LDC Table 10.2.3)**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because this is a master planned development, and thus the adjoining users are all part of this applicant/developer's tenant mix. No property owners or uses other than those involving this application affected by this waiver request; and

**WHEREAS**, the Commission further finds that the waiver will not violate the Comprehensive Plan as required plantings and screening will still be provided and the encroachment is along an internal access drive between the apartments and future commercial out-lots. There will be no effect on surrounding properties since this is internal to the development; and

**WHEREAS**, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because this applicant/developer is not requesting a total waiver of this LBA but only a partial one; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**WHEREAS**, the Commission further finds that 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 because it would have to totally redesign its own master planned development; and

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver to allow VUA to encroach into the required 35' Landscape Buffer Area (LBA) along the future commercial lots (LDC Table 10.2.3)

**The vote was as follows:**

**YES: Commissioners Blake, White, Turner, Scheer, Kirchdorfer, and Brown.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, Proffitt, Tomes, and Jarboe.**

**ABSTAINING: No one.**

**Detailed District Development Plan**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal conserves natural resources that currently exist on the site, including the 22.02 acre open space that is a wetland mitigation area in coordination with the Corps of Engineers; and

**WHEREAS**, the Commission further finds that Transportation Review has approved the proposal's transportation facilities; and

**WHEREAS**, the Commission further finds that open space has been provided in excess of the requirements of the LDC; and

**WHEREAS**, the Commission further finds that MSD has approved the drainage facilities for the site; and

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**WHEREAS**, the Commission further finds that the proposal enlarges the multi-family residential use to the west and creates a natural transition from the less intense single family residences to the south and the more intense uses to the north and east. The proposed buildings will be setback from the street and internal access drive along the south side of the commercial out-lots in a landscaped setting. Apartment buildings will be compatible with the design and height of structures in the area due to the commercial/industrial development in the area while being buffered from the single family residences to the south by a street and appropriate landscaping and screening. A large 22 acre open space on the western side of the development helps to buffer the existing residential areas to the west and south of the site from the future commercial and industrial uses that will potentially exist to the north and east; and

**WHEREAS**, the Commission further finds that the proposal enlarges the multi-family residential use to the west and creates a natural transition from the less intense single family residences to the south and the more intense uses to the north and east. The proposed buildings will be setback from the street and internal access drive along the south side of the commercial out-lots in a landscaped setting. Apartment buildings will be compatible with the design and height of structures in the area due to the commercial/industrial development in the area while being buffered from the single family residences to the south by a street and appropriate landscaping and screening. A large 22 acre open space on the western side of the development helps to buffer the existing residential areas to the west and south of the site from the future commercial and industrial uses that will potentially exist to the north and east; and

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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 Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

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

2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. 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. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of 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 minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

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

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.
8. The property owner shall provide a cross over access easement if the property to the north or east, as shown on the development plan, is ever developed. ~~for a nonresidential use.~~ A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.  
*Revised at the 12/05/13 Planning Commission public hearing*
9. The materials and design of proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the December 5<sup>th</sup>, 2013 Planning Commission public hearing.
10. The property owner shall provide an access easement for the flag pole lot between the properties addressed 1251 and 1257 McCawley Road as shown on the development plan. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

**The vote was as follows:**

**YES: Commissioners Blake, White, Turner, Scheer, Kirchdorfer, and Brown.**

**Planning Commission Minutes  
December 5, 2013**

**Public Hearing**

**Case No. 13ZONE1002**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, Proffitt, Tomes, and Jarboe.**

**ABSTAINING: No one.**