

PLANNING COMMISSION MINUTES
September 20, 2018

PUBLIC HEARING
CASE NO. 18ZONE1038

Request: Change in zoning from R-5B to C-1 with detailed district development plan and landscape waiver
Project Name: 1749 Frankfort Avenue
Location: 1749 Frankfort Avenue
Owner: Land Barker and Emily King

Applicant: Alexa Properties, LLC
Mohsen Deljoo
9100 Marksfield Road, Suite 100
Louisville, Ky. 40222

Representative: Dinsmore & Shohl, LLP
Clifford H. Ashburner
101 South 5th Street, Suite 2500
Louisville, Ky. 40202

Jurisdiction: Louisville Metro
Council District: 9 – Bill Hollander
Case Manager: Joel Dock, AICP, Planner II

Notice of this public hearing appeared in The Courier Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

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

Agency Testimony:

00:28:25 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

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

Summary of testimony of those in favor:

00:31:16 Mr. Ashburner gave a power point presentation. There will be no changes to the front of the building and it will maintain a residential look. The landscaping

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between the house and parking lot was meant to be retained but there's a possibility for removal because there is no requirement for commercial use. The fence will be removed and another portion will remain with additional fencing (double layer fence). The shared access drive will have a ramp and one window that may be converted into a door. The Clifton residents are concerned about the proliferation of commercial properties on Frankfort Ave. The following proposed binding element should help he citizens and developers: The subject property shall only be used for uses allowed in the C-R Commercial zoning district unless a change in use to a use allowed in the C-1 Commercial zoning district is approved by both the Louisville Metro Planning Commission and the Louisville Metro Council. Notice of any proposed change shall be given to the parties who received notice of the public hearing on September 20, 2018.

The following spoke neither for nor against the request:

Bill Hollander, Louisville Metro Council District 9

Summary of testimony of those neither for nor against:

00:40:20 Mr. Hollander stated he doesn't want the proposal approved because there's no stated use. Why not zone to C-R if that's what the applicant is proposing?

Rebuttal

00:42:03 Mr. Ashburner stated he has had many meetings with Clifton and this is a good compromise. It allows the applicant some flexibility and credit. It's fair to both parties.

47:53 and 56:42 Mr. Dock added to Mr. Ashburner's proposed binding element as follows: This binding element shall be subject to standard of review and notification in the Land Development Code, section 11.4.7.

Deliberation

00:48:56 Commissioner Howard asked if the applicant is only using CR uses, then why request C-1?

00:50:20 Commissioner Brown answered it is protection for the neighbors and shortens the process for the applicant.

00:51:12 Commissioner Daniels said she has no issues.

00:51:21 Commissioner Smith stated the binding element is a safeguard for the future tenant.

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00:52:06 Commissioner Carlson said it's a fair compromise.

00:54:30 Chair Jarboe stated it's a nice compromise for the neighbors.

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-5B to C-1

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on Cornerstone 2020 Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal incorporates an appropriately-located commercial district as Frankfort Avenue contains a wide variety of commercial, office, and residential uses located along an arterial roadway with an established pedestrian network. A medium intensity commercial zoning district will allow for further incorporation of neighborhood services; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because no changes have been proposed that impact the existing setback pattern or scale of development in the area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal preserves the existing grid pattern of streets, sidewalks and alleys as the existing patterns of streets, sidewalks, and alleys are not impacted; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because parking areas are located to the rear of the property away from public streets which is consistent with a traditional pattern of design. Street parking is available; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal's design is compatible with the scale and architectural style and building materials of existing developments in the corridor. Any change in building materials on the subject property will require review and approval by Planning and Design Services, Urban Design staff as the site is located in the Clifton Historic Preservation District. No changes have been indicated at this time; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal emphasizes compatibility of scale and the architectural style and building materials are compatible with nearby existing development as the proposal renovates an existing structure. Any change in building materials on the subject property will require review and approval by Planning and Design Services, Urban Design staff as the site is located in the Clifton Historic Preservation District. No changes have been indicated at this time; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center and is located in the Traditional Marketplace Corridor Form District; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because activities on the subject site are located in an area that has a sufficient population to support a wide range of non-residential/commercial activities; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment as minimal changes are being made on the property and these changes are to accommodate ADA access and meet parking demand; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because a C-1 commercial zoning district is supported by the surrounding mixture and close proximity of similar districts; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because commercial zoning districts allow for the incorporation of residential, office, and commercial activities in the same property; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal is not a large development and entails the reuse of an existing single-family home. It is located in the Traditional Neighborhood Form District, utilizes existing structures, and is supported by existing transportation networks; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because parking facilities will be provided on-site and access is shared with adjacent users having a similar zoning district; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the subject site is located in the urban services district and utility connections are available; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as bicycle facilities have been provided and the proposed district is supported by an existing grid containing pedestrian, transit, and bike networks; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because any change in building materials on the subject property will require review and approval by Planning and Design Services, Urban Design staff as the site is located in the Clifton Historic Preservation District. No changes have been indicated at this time; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposal does not constitute a non-residential expansion into an existing residential area as the subject site adjoins and is located in an area having similar or higher intensity commercial districts; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because uses permitted in the C-1, Commercial zoning district are non-industrial uses with limited emissions or odors; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because Frankfort Avenue is an arterial roadway. An arterial roadway is intended to serve as high capacity roadway and carry continuous travel to serve collector and local roadways; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because lighting will be in compliance with LDC 4.1.3; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposal is located along a major transit corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because appropriate transitions are provided as the majority of the site containing future commercial activities is within an existing structure. A minimal number of off-street spaces are provided and a 6' privacy fence is present in this area; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposed zoning district is compatible in scale and intensity with the area and abutting properties; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards as changes to the subject site are minimal and are consistent with traditional neighborhood design standards; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because parking areas are being provided to the rear of the structure and the impact upon an abutting residential zone is mitigated by an existing 6' wood privacy fence which provided needed screening; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because parking areas are located to the rear of the property away from public streets which is consistent with a traditional pattern of design; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because signage will be in compliance with Ch. 8 of the Land Development Code; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because open space is not a required component of the proposed zoning district. The public realm is being retained along Frankfort Avenue; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because there are no natural features to be incorporated into the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because the proposal includes the preservation and adaptive reuse of buildings, sites, and districts that are recognized as having historical or architectural value. It is compatible in height, bulk, scale, architecture and placement with the surrounding area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because the site does not appear to contain wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because the subject site is located along a mixed use corridor serving a wide range of intensities and densities. This corridor contains an arterial level roadway with a high level of pedestrian and transit connectivity; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because no contributions to the existing roadway network are being required at this time; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as the subject site is located along a multi-modal corridor with a high level of connectivity to the proposed district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposal's transportation facilities are compatible with and support access to surrounding land uses as shared access is provided to serve multiple uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because no additional right-of-way is required to be dedicated; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposal includes adequate parking spaces to support the use as the minimum number of spaces has been provided based on the gross floor area contained in structures on site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposal provides for joint and cross access through the development and to connect to adjacent development sites as shared access from Frankfort Avenue is being provided to serve multiple uses and continue to a rear alley; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because no stub streets are required or needed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because Frankfort Avenue is a mixed-use

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corridor containing a wide variety of intensities and densities. The subject site abuts the corridor which provides direct access to this mixture of intensities and densities; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because access to roadways is provided from existing points and being retained in an easement for shared access; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users as the existing roadway network accommodates these users in accessing the subject site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because natural corridors are not impacted by this proposal due to existing conditions and surrounding corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the proposal is located in an area served by existing utilities; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the proposal has access to an adequate supply of potable water and water for fire-fighting purposes; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the subject property is located in the Traditional Marketplace Corridor along south Frankfort Avenue in the Clifton neighborhood. Within the Traditional Marketplace Corridor, "the pattern of development is distinguished by a mixture of low to medium intensity uses" and should, generally, respect the existing street design and architecture. The subject property contains an existing residential

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structure that is adjacent to the recently-renovated Hilltop Theater building and is one of three houses left on this block of Frankfort Avenue. The proposal is to reuse the existing structure and to continue the historically sensitive reuse of structures on Frankfort Avenue in Clifton; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposed redevelopment complies with the intent and applicable policies of Guideline 2. The subject property is in an existing activity center and the property is surrounded by residences used as office and multi-family, the Hilltop Theater building (office and restaurant), and residences to the north and east. Reusing the subject property as a small retail establishment or office should not have any negative impact on any of the surrounding uses, especially considering that modifications to the building will be minor. The applicant will work with adjacent owners on landscaping to make sure that impacts from new off-street parking spaces are minimal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposed redevelopment complies with the intent and applicable policies of Guideline 3. The proposed reuse of the existing building should not adversely affect surrounding property owners with regard to any increase in traffic or lighting. In addition, the applicant is proposing to screen the new parking area from surrounding properties so that there will be no visual impact on the residential areas to the north and east. The applicant is also proposing minimal changes to the building and understands that any such changes will require a Certificate of Appropriateness; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space and Natural Areas and Scenic Historic Resources guideline because the proposed redevelopment complies with the intent and applicable policies of Guideline 4 and Guideline 5. The subject property is an already developed site that contains no natural areas but does contain a contributing structure to the Clifton neighborhood. The applicant will seek a Certificate of Appropriateness for any changes made to the building; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation and Transportation Facility Design guidelines because the proposed redevelopment complies with the intent and applicable policies of Guideline 7 - Circulation and Guideline 8 - Transportation Facility Design. Reusing the property as an office or small retail use will blend seamlessly into the surrounding neighborhood and further enhance Clifton's walkability. The applicant is providing the required amount of parking; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because the proposed redevelopment complies with the intent and applicable policies of Guideline 9 because it is located in an activity center near along Frankfort Avenue and is near many other shops, restaurants and offices, all of which blend in with the Clifton neighborhood. TARC service is available on Frankfort Avenue, and the overall Clifton neighborhood is very walkable. The applicant will provide bike parking as required by the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater and Water Quality guidelines because the proposed redevelopment should have very little impact, if any, on the surrounding waterways, complying with the intent and applicable policies of Guideline 10 - Flooding and Stormwater and Guideline 11 - Water Quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because the proposed redevelopment complies with the intent of Guideline 12 and with its policies. The proposal should have no negative impact on traffic or air quality based largely on its location. The subject property is surrounded by other business and residential uses in the highly-walkable Clifton neighborhood. In addition, due to its small size, the proposed redevelopment should generate very little new traffic.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5B, Two-family Residential to C-1, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Smith and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Lewis, Peterson, Robinson and Tomes

Waiver of Land Development Code, section 10.2 to eliminate the required 15' LBA along the west property line

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Standard of Review and Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

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WHEREAS, the waiver will not adversely affect adjacent property owners as conditions currently present have created the encroachments and a 6' wood fence is present in the area of off-street parking improvements; and

WHEREAS, the waiver will not violate specific guidelines of Cornerstone 2020 as Guideline 3, Policy 21 calls for appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements. Guideline 3, Policy 22 calls for mitigation of impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments. The proposed encroachments are a result of existing conditions and minimal off-street parking facilities. No additional mitigation appears to be necessary as a 6' wood fence is present in the area of parking improvements; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as existing conditions and parking demand have created the need for a reduction in the LBA; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as existing conditions and parking demand have created the need for a reduction in the LBA.

WHEREAS, the proposed waiver of the 15' landscape buffer areas along the western and rear property lines will not adversely affect adjacent property owners. The waiver will allow the existing building to remain within the landscape buffer area to the west and for the addition of three off-street parking spaces within the landscape buffer area at the rear of the property. The proposal does not include any alteration of the existing buffer area to the west of the subject property and the existing 6' wood privacy fence along the western property line will remain. The three additional parking spaces in the rear will be accessed from the existing 18' access drive to the east of the subject property, and a 5' landscape buffer will be retained along the western property line. Additional landscape buffering to the rear is unnecessary as the proposed parking area is adjacent to a 10' unimproved alley. Due to the small size of the property and limited proposed off-street parking, traffic impacts will be minimal; and

WHEREAS, the proposed waiver will not violate the Comprehensive Plan. The proposed waiver will permit the applicant to reuse the existing building as a small retail establishment or office consistent with the intent and policies of the Comprehensive Plan. As set forth above, the proposed waiver will allow the existing building

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structure to remain within the landscape buffer area to the west and for the construction of three off-street parking spaces at the rear of the subject property; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the proposed waiver of the regulation is the minimum necessary to afford relief to the applicant as it retains the status quo with respect to the existing building and will allow for construction of three off-street parking spaces at the rear of the subject property. Additional landscape buffering to the rear is unnecessary as the parking area will front onto a 10' unimproved alley; and

WHEREAS, the Louisville Metro Planning Commission further finds, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant as it would require the applicant to make substantial alterations to the existing building or eliminate proposed off-street parking. The proposed waiver will permit the applicant to reuse the building as a small retail establishment or office without any alteration of the structure, and to add three off-street parking spaces at the rear of the subject property.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver of the Land Development Code, section 10.2 to eliminate the required 15 foot landscape buffer area along the west property line.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Smith and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Lewis, Peterson, Robinson and Tomes

Detailed District Development Plan and Binding Elements

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

WHEREAS, the proposed development plan entails the revitalization of an existing structure which is an established component of the character in the area. The public realm is being preserved along Frankfort Avenue and the site does not appear to contain any natural features; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the subject

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property is served by an existing multi-modal network that is highly connected. Bike parking is provided on site as well; and

WHEREAS, open space is not a required component of the proposal. The public realm is being preserved; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Louisville Metro Planning Commission finds, appropriate transitions between uses that are substantially different in scale and intensity or density have been provided as existing conditions limit the ability to observe required landscape buffer area dimensions and minimal parking improvements appear to be mitigated by an existing 6' wood privacy fence; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan is in conformance with the Comprehensive Plan as minimal changes to the property have been proposed and impact abutting residential uses is limited. Parking has been provided to meet the demand for general commercial or office tenants on site. Any future changes to the exterior or expansion to the building will require the review of a revised plan subject to Cornerstone 2020, as well as a review of the Clifton Historic Preservation Guidelines.

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from 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.

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- 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 certificate of occupancy or building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
 - d. 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 to secure access from the existing access drive indicated on the approved development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
3. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
 4. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
 5. The subject property shall only be used for uses allowed in the C-R Commercial zoning district unless a change in use to a use allowed in the C-1 Commercial zoning district is approved by both the Louisville Planning Commission and the Louisville Metro Council. Notice of any proposed change shall be given to the parties who received notice of the public hearing on September 20, 2018. This binding element shall be subject to the standard of review and notification in the Land Development Code, section 11.4.7.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Smith and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Lewis, Peterson, Robinson and Tomes