

**MINUTES OF THE MEETING  
OF THE  
DEVELOPMENT REVIEW COMMITTEE  
September 18, 2019**

A meeting of the Development Review Committee was held on, September 18, 2019 at 1:00 p.m. in the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Committee Members present were:**

Rich Carlson, Vice Chair  
Jeff Brown  
Vince Jarboe

**Committee Members absent were:**

David Tomes, Chair  
Emma Smith

**Staff Members present were:**

Joe Reverman, Planning and Design Assistant Director  
Brian Davis, Planning and Design Manager  
Steve Hendrix, Planning and Design Coordinator  
Dante St. Germain, Planner II  
Beth Jones, Planner II  
Jay Lockett, Planner I  
Lacey Gabbard, Planner I  
John Carroll, Legal Counsel  
Laura Ferguson, Legal Counsel  
Pamela M. Brashear, Management Assistant

The following matters were considered:

## **DEVELOPMENT REVIEW COMMITTEE**

**September 18, 2019**

### **APPROVAL OF MINUTES**

#### **AUGUST 28, 2019 DRC MEETING MINUTES**

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

**RESOLVED**, that the Development Review Committee does hereby **APPROVE** the minutes of its meeting conducted on August 28, 2019.

**The vote was as follows:**

**YES: Commissioners Brown and Carlson**

**NOT PRESENT FOR THIS CASE: Commissioners Smith and Tomes**

**ABSTAINING: Commissioner Jarboe**

#### **SEPTEMBER 4, 2019 DRC MEETING MINUTES**

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

**RESOLVED**, that the Development Review Committee does hereby **APPROVE** the minutes of its meeting conducted on September 4, 2019.

**The vote was as follows:**

**YES: Commissioners Brown and Carlson**

**NOT PRESENT FOR THIS CASE: Commissioners Smith and Tomes**

**ABSTAINING: Commissioner Jarboe**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**OLD BUSINESS**  
**19CELL1001**

Project Name: Bardstown Road  
Location: 3738 Bardstown Road  
Owner: The First Alliance Church of the Christian and Missionary Alliance, Inc.  
Applicant: Vertical Bridge Development, LLC, T-Mobile  
Representative: Briggs Law Office, PSC, Todd R. Briggs  
Jurisdiction: Louisville Metro  
Council District: 10 – Pat Mulvihill  
**Case Manager: Steve Hendrix, Planning & Design Coordinator**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

00:07:10 Mr. Hendrix discussed the case summary, standard of review and staff analysis from the staff report. Vice Chair Carlson asked if there was any change to the location of the cell tower (since the last meeting). Mr. Hendrix said no. Vice Chair Carlson asked when the deadline would be for this case. Mr. Hendrix said the applicant extended it until today.

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

Todd Briggs, 10200 Forest Green Boulevard, Suite 112, Louisville, Ky. 40223

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

00:11:42 Mr. Briggs submitted a map showing the 5 adjoining sites T-Mobile currently operates from. The gaps will be covered with the use of this site. A letter was written and sent to the credit union asking them to withdraw their objections. T-Mobile stands by its application meeting the requirements of the zoning ordinance. Commissioner Brown asked if there was a response from the letter to the credit union. Mr. Briggs said no. Vice Chair Carlson asked why the tower can't be moved closer to the church instead of the neighbor's building. Mr. Briggs said it's not close to them, it's approximately 500 feet from their front door. T-Mobile is not entertaining moving locations because a lot of due diligence has gone in it and it abides by the ordinance. Vice Chair Carlson asked if the W. Beuchel Public Works facility was approached to locate the tower there. Mr. Briggs said no they were not as most of that area is residential, that's why it's being located in a commercial area. Vice Chair Carlson asked

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**OLD BUSINESS**  
**19CELL1001**

if they looked at the other manufacturing and commercial areas (close by). Mr. Briggs said the chosen area has existing vegetation that will provide adequate screening.

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

Michael Marks, 2933 Bowman Avenue, Louisville, Ky. 40205

**Summary of testimony of those in opposition:**

00:20:58 Mr. Marks, attorney representing Transcend Credit Union, stated this is a private company building a cell tower for commercial gain, not providing a civic duty. The credit union does not oppose cell service, it's just not the appropriate location to follow the 2040 Plan. There are other sites on the list that fit the criteria and 19.3 says they must minimize the likely effect on nearby land uses and values. Why can't the church put it closer to their building since they are the ones that will benefit economically? At the last DRC meeting, the applicant was asked to look at other options for locating the cell tower but they have not done that. Commissioner Jarboe asked, how does a cell tower hurt your client's business? Mr. Marks said there have been many studies citing cell towers being close to the property line and decreasing the property value. Commissioner Jarboe stated he hasn't heard of a cell tower hurting a commercial site's property value (usually residential). Mr. Marks said there have been studies and it's referenced in their packets; however, it's not his burden to provide that information. Also, if it doesn't hurt the property value, why not put it next to the church?

**Rebuttal:**

00:28:06 Mr. Briggs stated the neighbors were notified by mail, signs were posted and a legal ad was placed in the Courier Journal.

**Deliberation**

00:28:46 Commissioner Brown said he understands both sides and was hoping they would come to a compromise. A cell tower is a public benefit, but there's a concern for the specific site location. It could have been moved 200-300 ft. north to satisfy both parties.

00:29:53 Commissioner Jarboe stated the proposal meets the requirements of the Land Development Code.

00:30:59 Vice Chair Carlson stated the applicant/representatives have not followed the Comprehensive Land Use Plan as far as selecting a site such as a highway right-of-way, existing utility towers, commercial centers, government buildings, high rise office buildings or high rise residential structures. There was no testimony saying why the

## **DEVELOPMENT REVIEW COMMITTEE**

**September 18, 2019**

### **OLD BUSINESS**

#### **19CELL1001**

other locations would not work. Commissioner Jarboe said the Public Works facility is closer to a residential area. Commissioner Brown said there was no good faith effort made to evaluate the other facilities.

**An audio/visual recording of the Development Review Committee meeting 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.**

**This is an application for a proposed 105 foot monopole tower with a five foot lightning arrestor for a total structural height of 110 feet within an approximate 2,500 square foot compound area. An eight foot wooden privacy fence with 13 evergreen trees will buffer the compound area.**

On a motion by Commissioner Brown, seconded by Commissioner Jarboe, the following resolution based on Goal 3 within the Community Facility chapter of the Comprehensive Plan and that 19.1 and 19.2 weren't considered with the site selection and there could be alternative sites better suited for this use that would not impact the abutting properties and the testimony heard today was adopted.

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **DENY** the application for the 110 foot pole and 2,500 square foot compound area.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**OLD BUSINESS**  
**19PARK1004**

Project Name: PG&J Dog Bar  
Location: 800 Baxter Avenue  
Owner(s): Gilwin Development LLC.  
Applicant: Gina Nobles  
Jurisdiction: Louisville Metro  
Council District: 8 – Brandon Coan  
**Case Manager: Jay Luckett, AICP, Planner I**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

00:37:39 Mr. Luckett discussed the case summary, standard of review and staff analysis from the staff report.

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

Councilman Brandon Coan, 601 West Jefferson Street, Louisville, Ky. 40202  
Gina Nobles, 6510 Duroc Avenue, Prospect, Ky. 40059  
Brian Goodwin, 800 Baxter Avenue, Louisville, Ky. 40204  
Ben Botkins, 1377 Bardstown Road, Louisville, Ky. 40204

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

00:42:02 Councilman Coan stated Metro Council that has made a resolution to eliminate the minimum parking requirements from the Land Development Code, one of the areas being this part of the Highlands. Also, there is some concern about bars in the north end of Baxter Ave./Bardstown Rd. corridor, but this proposal is not a typical bar. It's a private dog park where people can also have a drink. It's a nice amenity for the area.

00:45:09 Ms. Nobles gave a power point presentation. This will be the city's first indoor/outdoor dog park bar and it has 2 purposes – to provide a fun, safe and social place for dogs and owners and to promote, educate and advocate for the rescue community. The plan is to redevelop, preserving and maintaining the green space in the back. The front will be cleaned up, trees will be planted and the green space increased. There will be a new curb cut which will provide an additional 2 spaces in the front. A parking study was done and there are ample parking spaces on the street. We want to encourage people to walk to the facility.

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**OLD BUSINESS**  
**19PARK1004**

00:49:49 Mr. Goodwin represents the property owner. The proposal is a dog park with a bar. The project will be neighborhood friendly and the building improvements are much needed to help beautify the area.

00:51:51 Mr. Botkins stated he's in support of the revitalization of the area. There are a lot of dogs in the area and the proposal will be a welcome addition to the neighborhood.

00:53:36 Vice Chair Carlson asked if there will be a lot of seating for the bar. Ms. Noble said there will be about 50 seats inside.

00:54:28 Vice Chair Carlson asked Mr. Luckett if the parking requirement was calculated based on the potential number of seats for a tavern. Mr. Luckett said yes, it was based on a tavern or bar – the square footage or floor area which included the entire interior and the seating for the exterior portion. The area for the dogs to run around was not included in the parking calculations.

**Deliberation**

00:55:51 Commissioner Jarboe said any infill development is an A+, as well as the green space and planting of trees.

00:56:16 Commissioner Brown stated he likes the proposal and would like to see events for rescue groups and have open houses. It's good to see the screening for the parking.

00:56:56 Vice Chair Carlson supports the proposal as well.

**An audio/visual recording of the Development Review Committee meeting 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.**

**Parking Waiver to reduce minimum parking requirement from 34 to 25**

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

**WHEREAS**, the proposal would allow for the reuse of an existing site within an established activity center. The site is well served by existing transportation networks and is part of a walkable area well served by transit, bike and pedestrian networks. The

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**OLD BUSINESS**  
**19PARK1004**

elimination of parking minimums is consistent with the Traditional Marketplace form district as described in Plan 2040; and

**WHEREAS**, the applicant has provided as many spaces as possible on the subject site, and made a good faith effort to secure agreements with other sites for joint-use parking but was unsuccessful; and

**WHEREAS**, the requested waiver is the smallest possible reduction of parking spaces that would accommodate the proposed use, as they have provided as much as possible on site; and

**WHEREAS**, adjacent or nearby properties will not be adversely affected, as the development pattern of the area allows for minimum on-site parking for most sites. Businesses in the area are used to sharing public parking facilities and patrons are able to utilize alternative transportation networks to reach the area; and

**WHEREAS**, the Louisville Metro Development Review Committee finds the requirements found in table 9.1.2 do not accurately depict the parking needs of the proposed use. Patrons of bars and taverns should be discouraged from driving as much as possible. Bars and taverns have a parking requirement in the Land Development Code that is at odds with the public health, safety and welfare. Public transit, pedestrian networks and the wide availability of taxis and ride-sharing services reduce the need for patrons to drive to bars and taverns, thereby mitigating public safety issues traditionally associated with such uses; and

**WHEREAS**, the Louisville Metro Development Review Committee further finds there is a surplus of on-street and public spaces in the area that can accommodate generated parking demand. All streets near the area have abundant on-street parking available.

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the parking waiver to reduce minimum parking requirement from 34 to 25.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**



**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-WAIVER-0053**

Request: Waivers regarding size and location of LED image-changing sign  
Project Name: Church of the Harvest LED Sign  
Location: 8300 Shepherdsville Road  
Applicant: Golden Rule Signs  
Jurisdiction: Louisville Metro  
Council District: 24 – Madonna Flood  
**Case Manager: Beth Jones, AICP, Planner II**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

00:58:39 Ms. Jones discussed the case summary, standard of review and staff analysis from the staff report.

01:02:38 Mr. Carroll, legal counsel, asked where the sign will be located. Ms. Jones said it will be in the public right-of-way. Also, will there be off site advertising? Mr. Davis said there will only be church activity advertising.

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

Logan Baker,  
Pastor Ricky Dunnavan, 8300 Shepherdsville Road, Louisville, Ky. 40229

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

01:04:05 Mr. Baker stated there's no off premise advertising. The applicant is going with a much smaller sign per square footage. Commissioner Brown said that would be o.k. if it were on private property, but it's in the right-of-way. Mr. Baker explained that there is an agreement with Public Works to issue a license to put the sign there. Also, there are similar signs ¼ mile away (both directions). The church is agreeable to shut the LED portion of the sign off at a reasonable time.

01:07:21 Commissioner Jarboe asked why the sign can't be located on the church property. Mr. Baker said there's a large easement in front of the property and the sign would be in the parking lot.

01:08:00 Vice Chair Carlson asked if there's a way, from a software standpoint, to ensure the sign is turned off at a reasonable time. Mr. Baker said yes, although the church personnel will control it. Vice Chair Carlson wants the time to be factory-set so

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-WAIVER-0053**

no person can modify it. Mr. Baker said they can lock them out from the functionality, but not limit their freedom from messages to be used.

01:11:12 Mr. Dunnavan said people speed coming from the hill and will not be able to see the sign very clearly. The church is very community oriented so the sign is very much needed.

**Deliberation**

01:13:45 Commissioner Brown stated he's concerned that the property directly abutting northeast of the church may need some additional vegetation for screening purposes. Commissioner Brown suggests the following conditions of approval: sign off from dusk until dawn; no more than one message per minute; and no animation.

01:14:45 Commissioner Jarboe agrees and is o.k. with it being in the right-of-way as long as Public Works approves.

01:15:29 Commissioner Brown stated there will be a higher level of enforcement because it's within the public right-of-way and will have to get a license agreement with Public Works which includes an annual fee and bond. If they're not compliant, Public Works will issue a letter stating 'you are no longer compliant, remove the sign'.

01:16:20 Vice Chair Carlson stated he could support the request if there are conditions of approval that the software programming for the sign can be set so that it changes images no more than one time per minute, turns off at a designated time and those parameters cannot be overridden by a field user.

01:19:48 Mr. Baker said there is an auto dimming feature on the signs and the software change can be created but would be cost-prohibitive. The default time can be changed.

01:27:29 Mr. Reverman stated, the committee can put conditions restricting the rate of change to a certain number of seconds or minutes based on the characteristics of this property which can be enforced. The committee may not want to hold up this case because technology is not in the purview of the property owner.

**An audio/visual recording of the Development Review Committee meeting 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.**

**DEVELOPMENT REVIEW COMMITTEE**

**September 18, 2019**

**NEW BUSINESS  
19-WAIVER-0053**

**WAIVER to permit a changing image sign to exceed the maximum limit of 30% of the total sign area (LDC 8.2.1.D.4.)**

**WAIVER to permit a changing image sign to be located closer than 300 ft. from a residentially zoned district (LDC 8.2.1.D.6.)**

On a motion by Commissioner Brown, seconded by Commissioner Jarboe, the following resolution based on the testimony heard today was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because limits have been set on the hours of operation and frequency of the change; and

**WHEREAS**, the Louisville Metro Development Review Committee finds the waiver is in compliance with Plan 2040 due to those conditions added; and

**WHEREAS**, the Louisville Metro Development Review Committee further finds the waiver is the minimum necessary to afford relief to the applicant because they are on a constrained site and it's where the public right-of-way exceeds what's typically seen on a use of this nature and the conditions put on the sign are mitigating the impact of both waivers.

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** a waiver to permit a changing image sign to exceed the maximum limit of 30% of the total sign area (LDC 8.2.1.D.4.) and a waiver to permit a changing image sign to be located closer than 300 ft. from a residentially zoned district (LDC 8.2.1.D.6.), **SUBJECT** to the following conditions of approval:

1. The sign shall be turned off from dusk until dawn 7 days a week.
2. The frequency is to change no more than once per minute.
3. There will be absolutely no animation on the sign.
4. A license agreement is received from Metro Public Works for the sign in the right-of-way prior to the installation of the sign.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-FFO-0002**

Request: Floyds Fork Overlay Review  
Project Name: Parking Lot Expansion  
Location: 14910 Taylorsville Road  
Owner: Trustees of First Baptist Church  
Applicant: Mindel Scott & Associates  
Jurisdiction: Louisville Metro  
Council District: 20 – Stuart Benson  
**Case Manager: Beth Jones, AICP, Planner II**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

01:36:33 Ms. Jones discussed the case summary, standard of review and staff analysis from the staff report.

01:43:25 Commissioner Brown asked if the applicant is proposing any additional landscaping or just the berm to shield the parking. Ms. Jones said no, not at this time. There's only limited work being done.

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

Eric Lee, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Suite 101, Louisville, Ky. 40219

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

01:44:20 Mr. Lee said this is small parking lot expansion and restriping of the existing parking lot. The client has agreed to add an additional 115 feet of sidewalk to the northwest portion of the site to the existing driveway.

**Deliberation**

01:45:55 Commissioner Brown stated the applicant has mitigated the impact and complied with the Floyds Fork Design Guidelines.

**An audio/visual recording of the Development Review Committee meeting 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.**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-FFO-0002**

**Floyds Fork Overlay District Development Review**

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

**WHEREAS**, the site does not include a stream corridor; and

**WHEREAS**, the site does not include wooded areas. Existing trees will be preserved as shown on the development plan to be reviewed in association with the CUP request; and

**WHEREAS**, the proposed increase in parking will result in an increase in impervious surfaces on the site. The proposed development plan has received preliminary approval from MSD; and

**WHEREAS**, the site does not include hillsides; and

**WHEREAS**, the proposed development does not include residential uses; and

**WHEREAS**, the site does not include historic elements; and

**WHEREAS**, new development should be set back a minimum of 50 feet from the right-of-way line of designated scenic corridors (Map A). This area is reserved to accommodate landscaping consistent with the "rural character" of the Floyds Fork corridor. When used in this context, development includes all buildings, signs, parking lots; service drives and access roads that parallel designated scenic corridors. New development meets this setback requirement; and

**WHEREAS**, landscaping in the 50 foot green space along designated scenic corridors should include earth berming (average height of three feet) and shrub masses to screen parking areas. Large deciduous trees, a minimum of one tree for every 50 feet of roadway frontage, should be planted in the green space. Existing trees should be retained whenever possible, both in the buffer area and within the area to be developed. Trees should be planted at least ten feet from the right-of-way. Existing trees planted along the property frontage meet this requirement. All existing trees will be retained; and

**WHEREAS**, parking to the rear is not possible due to the location of the existing buildings at the rear of the lot. The proposed development plan has received preliminary approval from Transportation Planning; and

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-FFO-0002**

**WHEREAS**, the Louisville Metro Development Review Committee finds buildings, parking lots, and other impervious surfaces should cover no more than 75 percent of each site. The remainder of the site should be planted and maintained with live vegetative cover so as to reduce visual impacts as well as drainage and runoff problems. The proposed development meets this requirement; and

**WHEREAS**, the Louisville Metro Development Review Committee further finds parking areas, outbuildings, satellite dishes, and other less attractive aspects of a development should be screened from view. Where total screening is impractical, partial measures that lessen the full visual impact of development are recommended. The proposed development meets this requirement.

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the Floyds Fork Overlay District Development Review.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0036**

Request:	Revised Detailed District Development Plan
Project Name:	Schumacher Homes
Location:	121 Huntington Ridge Drive
Owner:	Schumacher Homes of Kentucky Inc.
Applicant:	Schumacher Homes of Kentucky Inc.
Representative:	Milestone Design Group
Jurisdiction:	City of Middletown
Council District:	19 – Anthony Piagentini
<b>Case Manager:</b>	<b>Dante St. Germain, AICP, Planner II</b>

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

01:47:04 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

01:50:34 Vice Chair Carlson asked why this plan is back before DRC. A recommendation was made and denied. Shouldn't it be the city of Middletown's decision now? Ms. St. Germain said the changes were very significant between DRC's recommendations and the city of Middletown's changes. Middletown wants it to go through the same process.

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

Mark Madison, Milestone Design Group, 108 Daventry Lane, Suite 300, Louisville, Ky. 40223

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

01:53:24 Mr. Madison stated this case has gone back and forth with the city of Middletown with the final results being: one display building was eliminated; approval of the waiver; 2 buildings on each end facing forward and the building in the middle facing the interstate; parking lot handicap spaces were changed (moved to other side); and everything else remained the same. An ordinance was passed by the city of Middletown and Planning and Design Services decided to bring this case back to DRC.

**Revised Detailed District Development Plan**

**Deliberation**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0036**

01:55:50      Development Review Committee deliberation.

**An audio/visual recording of the Development Review Committee meeting 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.**

**Revised Detailed District Development Plan with Binding Elements**

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

**WHEREAS**, there do not appear to be any environmental constraints or historic resources on the subject site. The site is undeveloped and no natural resources appear to exist on the site. The tree canopy which previously existed on the site has been removed; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. Louisville Metro Public Works has provided preliminary approval of the plan; and

**WHEREAS**, there are no open space requirements pertinent to the current proposal; and

**WHEREAS**, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision 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 Development Review Committee finds the overall site design and land uses are compatible with the existing and future development of the area. The subject site is located in an area with both developed and undeveloped parcels; and

**WHEREAS**, the Louisville Metro Development Review Committee further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the City of Middletown Land Development Code, with the exception of a granted waiver.



## DEVELOPMENT REVIEW COMMITTEE

September 18, 2019

### NEW BUSINESS

19-DDP-0036

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **RECOMMEND** that the city of Middletown **APPROVE** the Revised Detailed District Development Plan **SUBJECT** to the following Binding Elements:

1. The development shall be in accordance with the approved revised detailed district development plan, which shall match the example presented to the City Commission on the 13th day of June, 2019, showing the front of all buildings facing Huntington Ridge except for one of the model homes, and the agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission and City of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The model homes shall not be occupied as residential structures and the renderings of all structures must be the same as the renderings approved by the City of Middletown. If any structure is torn down and rebuilt, Developer must resubmit new renderings to the City of Middletown for review and approval prior to requesting a building permit.
3. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site. Attached signage on the model homes will be allowed, if compliant with the City of Middletown sign ordinance and after review and approval of a sign permit from the City of Middletown.
4. Construction fencing shall be erected with 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. No outdoor construction on Sunday prior to 1 p.m. Prior to and during construction, applicant shall give the City of Middletown full contact information (cell phone), for the employee or other individual in charge of site maintenance.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville and the Metropolitan Sewer District.
  - b. The property owner/developer must obtain approval by the Planning Commission and the City of Middletown 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. There shall be no removal of the required landscaping

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0036**

without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be as are deemed adequate by the City to mitigate the impact.

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

d. Unless a building permit or a clearing and grading permit is issued within two years from the date of the City of Middletown's approval herein, then the development plan must return to the Planning Commission and the City of Middletown for re-approval before any work can commence.

e. The Mayor is hereby authorized by the City Commission (at the Mayor's option), to issue any subsequent City of Middletown approvals for the revised detailed district development plan changes detailed herein, the landscape plan and other permit approvals.

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 and the City of Middletown.
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 the 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. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4, Part 1.3 of the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the Land Development Code.
9. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0036**

10. All binding elements and/or conditions of approval set out herein have been accepted in total, without exception, by the entity requesting this approval.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**

## DEVELOPMENT REVIEW COMMITTEE

September 18, 2019

### NEW BUSINESS

19-DDP-0043

Project Name: First Watch Middletown  
Location: 12913 Shelbyville Road  
Owner(s): John Paselsky, OHP Middletown KY LLC  
Applicant: Petey Cunningham, Holland Development LLC  
Jurisdiction: Middletown  
Council District: 19 – Anthony Piagentini  
**Case Manager: Lacey Gabbard, AICP, Planner I**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

### Agency Testimony:

01:57:04 Ms. Gabbard discussed the case summary, standard of review and staff analysis from the staff report.

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

Mike Hill, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

### Summary of testimony of those in favor:

01:59:27 Mr. Hill gave a power point presentation. This case has been through the process and has been approved by Louisville Metro and Middletown. The building is currently under construction but the mayor inquired about relocating the dumpster location. That's the only change on the development plan today.

### Deliberation

02:02:17 Development Review Committee deliberation.

**An audio/visual recording of the Development Review Committee meeting 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 of Land Development Code section 10.2 to allow the proposed dumpster enclosure to be located within the 25 foot landscape buffer area along the west property line (19-WAIVER-0043)**

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0043**

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

**WHEREAS**, the waiver will not adversely affect adjacent property owners since the property to the west of the subject site is zoned R-4 single family residential but, according to PVA, the parcel is owned by Louisville Gas & Electric and the use is Utility Industrial. The adjoining parcels on the north side of Shelbyville Road are all internal to the Middletown Station development. The properties on the south side of Shelbyville Road are zoned OR-3 Office-Residential or C-1 Commercial and are screened from the dumpster by Shelbyville Road and the 25 foot scenic corridor buffer located on the subject site; and

**WHEREAS**, Land Use & Development Goal 1, Policy 10 calls for mitigation of the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Land Use & Development Goal 1, Policy 9 ensures an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.

The applicant is requesting a waiver to allow the proposed dumpster to encroach into the 25 foot LBA on the west side of the property by less than 10 feet. The parcel immediately to the west of the subject site, while zoned R-4 Residential, is used as Utility Industrial and owned by Louisville Gas & Electric. The two uses are not incompatible since the subject site was previously developed as an Applebee's restaurant and there are no known complaints regarding the use of the neighboring site. Additionally, the uses do not appear to be substantially different in intensity or density. The proposed plan indicates that all required LBA plantings will be provided; and

**WHEREAS**, the Louisville Metro Development Review Committee finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant proposes to provide all required plantings and only encroach into the LBA by less than 10 feet on the eastern property line. Additionally, Middletown has requested the dumpster be relocated to the proposed location; and

**WHEREAS**, the Louisville Metro Development Review Committee further finds the strict application of the provisions of the regulation would deprive the applicant of the

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0043**

reasonable use of the land or would create an unnecessary hardship on the applicant since the applicant proposes to provide all required plantings, and Middletown has requested that the dumpster be relocated.

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **RECOMMEND** that the city of Middletown **APPROVE** a waiver of the Land Development Code section 10.2 to allow the proposed dumpster enclosure to be located within the 25 foot landscape buffer area along the west property line.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**

**Revised Detailed District Development Plan**

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

**WHEREAS**, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. The proposed plan does not substantially alter the site or its natural resources; and

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

**WHEREAS**, there are no open space requirements pertinent to the current proposal. Future multifamily development proposed on the subject site will be required to meet Land Development Code requirements; and

**WHEREAS**, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision 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 Development Review Committee finds the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0043**

**WHEREAS**, the Louisville Metro Development Review Committee further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **RECOMMEND** that the city of Middletown **APPROVE** the Revised 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 and to the City of Middletown 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. 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.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use or site disturbance is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.

**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**NEW BUSINESS**  
**19-DDP-0043**

- b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - 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.
7. If a certificate of occupancy (building permit) is not issued within one (two) year(s) of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
  8. 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.
  9. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line or permitted on the site.
  10. 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.

**The vote was as follows:**

**YES: Commissioners Brown, Jarboe and Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes**



**DEVELOPMENT REVIEW COMMITTEE**  
**September 18, 2019**

**ADJOURNMENT**

The meeting adjourned at approximately 3:05 p.m.

---

**Chair**

---

**Planning Director**