

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

NOTE: Public Hearings were conducted on October 1, 2018 and October 15, 2018 (see associated minutes.)

Request: *Deferred from public hearing October 15, 2018*
Change in zoning from C-1 to C-2 Commercial with a Conditional Use Permit and Revised Detailed District Development Plan for golf driving range and entertainment center; Variances for setback, height and stream buffer encroachments; Waiver of landscape buffer; lighting Waiver, and consideration of lighting report and lighting height

Project Name: TopGolf at Oxmoor Center
Location: 7900 Shelbyville Road
Owner: WMB 2, LLC and TWB Oxmoor 2, LLC
Applicant: TopGolf USA Louisville, LLC
Representative: Clifford Ashburner – Dinsmore & Shohl, LLP
Jurisdiction: Louisville Metro
Council District: 18 – Marilyn Parker

Case Manager: Joel Dock, AICP, Planner II

Notice of the 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

***See recording for verbatim Commissioners' comments and deliberations.**

Deliberation:

00:09:03 Commissioner Tomes first discussed traffic, lighting, height, and sound. Regarding traffic, he said the studies show that there will be less impact on surrounding areas with this proposal than with the active department store. Regarding lighting, he said the lighting plan and studies show a "great reduction" in the intensity of the lighting, as well as a reduction in the height of fixtures than what is currently in the lot at Oxmoor Center. He said all lighting must comply with light trespass regulations under the Land Development Code. He noted that the closest homes to the field lights are

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

approximately 1/4 mile away, and many citizens who testified in opposition are much farther away. He discussed the landscaping, both summer and winter, and how it will work to reduce noticeable light.

Commissioner Tomes noted that the property directly abutting the residential properties is currently zoned R-6 and Campus. Today, this is used as a soccer field, but could also become apartments or multi-family with no zone change.

00:16:03 Commissioner Tomes discussed the proposed variance for the height of the poles. He said the maximum is for a 150 ft. building height; but the poles are not buildings or solid structures and are not lighted. He added that these structures are at a great distance from residential areas.

00:20:34 Regarding sound issues, Commissioner Tomes said the applicant has indicated by their studies that they will comply with LDC regulations.

00:20:48 Commissioner Tomes discussed his concerns about mall failures, and the importance of using these spaces in a productive way, either through retail or entertainment.

00:22:34 Commissioner Peterson said he agreed with what Commissioner Tomes has stated. He said that the presentations made by both proponents and opponents were extremely thorough. He said he believes that the lighting will be greatly improved over what is there now. He said the applicant will be aiming the lighting down at the field, using special shielded fixtures, installing buffering and landscaping, and dimming the lights at closing time. He said he believes these measures will alleviate and mitigate any light impacts. He discussed traffic concerns. He said he agreed with Commissioner Tomes regarding the pole height and noted that the poles are not lighted. He discussed the R-6 properties between Hurstbourne and the TopGolf facility, and noted that, when these properties are developed, there will be even less of a sound and visual impact on the neighborhood. He also expressed concern about mall failures in other towns and cities.

00:28:30 Commissioner Howard itemized regulations and requirements in the Land Development Code which support this project. She noted that the site is located in the Regional Form district; the landscaping plan is "much-needed improvement"; and there will be less glare and less light trespass than allowed by the LDC. She said the waiver and variance are "necessary, and do not adversely affect the public health, safety, or welfare of the general public." She said she approves of the Conditional Use Permit and the Waiver requests.

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

00:32:43 Commissioner Brown asked Ms. Howard about Part D of the Conditional Use Permit, which requires a driving range to orient away from the roadway (see page 8 of the staff report.) Ms. Howard said the area of the driving range is not going toward the street; it is still within the redevelopment area, and is more than 30 feet away from the street or the highway. She said she did not see an adverse impact. Commissioner Brown added that the applicant has applied for a Variance to exceed the maximum setback to help further mitigate any impact. Commissioner Howard said that the applicant would have 275 feet away from the setback, when only 30 feet is required. Commissioner Jarboe added that there will also be parking between the range and Christian Way. Commissioner Peterson said the netting is required to retain golf balls, and therefore supersedes Part D. Commissioner Howard said she also approves the Revised Detailed District Development Plan.

00:34:50 Commissioner Brown said he agreed with what has been said. He said his main concern was about glare, but that the lighting explanations and discussions have allayed his concerns.

00:35:47 Commissioner Lewis said she also agreed with previous Commissioners' statements and that she is satisfied that there will be no issues with traffic, noise, and lighting. She said she supports all aspects of the project. She said she spent much time reviewing the height variance request for the poles and feels it is justified for several reasons, but mostly for public safety. She said she thinks the LDC and Form district supports the project.

00:38:55 Commissioner Robinson said he also agreed with what previous Commissioners have stated. He said the entire proposal meets the Land Development Code.

00:39:24 Commissioner Carlson said he also agrees with what previous Commissioners have stated about light, noise, and traffic. He said his main concern was about noise levels, but a binding element drafted by Planning Commission staff addressed concerns. Enhanced landscaping will be beneficial for the lighting issue.

00:41:40 Commissioner Daniels said she agreed with the other Commissioners, and felt that the applicant has addressed all of the issues. The lighting has been addressed, and the landscaping should mitigate sound issues.

00:42:42 Commissioner Jarboe said he also agreed with previous Commissioners' statements. He said the requests follow the Comprehensive Plan, and the applicant has mitigated the concerns of the opposition. He discussed the height of the net poles. This is also a good example of adaptive re-use of an empty parking lot and empty store.

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

00:46:47 Commissioner Brown noted that this is a minor expansion of existing C-2 zoning, in a Regional Center Form district.

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.

Change in Zoning

00:47:15 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Cornerstone 2020 Staff Analysis, testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's findings of fact, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal is of a moderate to high intensity consistent with the high intensity uses found in a Regional Center Form District as the C-2 zoning district allows for a wide range of regional goods and services that are not available in lower intensity zoning districts which offer neighborhood goods and services. The proposed intensity is consistent with the zoning classifications found in Regional Center form districts along Outer Loop (Jefferson Mall) and the interchange of Interstate-265 and Brownsboro Road (Paddock Shops and Old Brownsboro Crossing). The proposed zoning district builds upon an existing regional shopping center and does not proposed to expand the extent of the form district. Civic uses can be found within the form district opposite Interstate-264. The proposal contributes to the identity of the regional center as a focal point for transit from homes and workplaces as the proposed C-2 zoning district allows by way of conditional use permit for the incorporation of a regional attraction and destination point for entertainment in an area of current vacancy. The proposal is compact and provides for efficient movement of pedestrians, vehicles, transit, and bicycles through and around the site as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The Traffic Impact Study made no recommendations for further improvements to the existing vehicular network serving the site. The proposal supports a high level of transit access and connectivity as the site is served by high frequency TARC route #19 and continued internal access from Christian

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

way to Oxmoor Lane is retained as requested by TARC planning staff. The proposal includes unified signs, and landscaping and building design that gives identity to the center and that provides a human scale, and includes an internal focal point as the existing Oxmoor Center includes signature entrances and the proposal will provide interior landscape areas and a pedestrian and vehicular concourse from Oxmoor Lane to the primary building entrance and a pedestrian gathering space. The proposal provides shared parking to avoid excessive impervious surface and to encourage customers to visit several establishments without moving their vehicles as the Oxmoor Center is a regional indoor shopping center and provides shared parking for all uses for the benefit of their customers, employees, and guests of multiple retail, entertainment, and dining establishments; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal will not create a new center. The proposed zoning district is located within an existing Regional Center form district and allows for the construction of new attractions and destination points in a currently vacant area of a former anchor department store. The proposed C-2 zoning district is located at the interchange of a major arterial and a limited access highway and provides for the provision of goods, services, and entertainment to serve a population of at least 100,000 as called for in a Regional Center. The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment as the proposal allows for the reinvestment in a vacant anchor department store at a regional shopping center and the proposed development plan includes shared parking, pedestrian ways, and integration with the existing shopping facility. The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place as the subject property is served by high frequency TARC route #19 and continued internal access from Christian Way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The proposal allows for the redevelopment of a previously indoor shopping center for the inclusion of outdoor amusement and entertainment for a wide reaching population to gather at the shopping center. The proposed C-2 zoning district does not prevent the incorporation of future residential or offices uses. It increases the potential for high density development in conjunction with a shopping facility and high frequency transit access. Residential development is not currently proposed on the subject site, but adjacent sites are zoned appropriately for high density development. The proposed development is designed to be oriented around a central gathering space as a previously approved restaurant development near the primary building entrance provides outdoor pedestrian amenity spaces. The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic,

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

transit, pedestrian, environmental and aesthetic concerns as the Oxmoor Center is subject to recorded Crossover Access agreement as indicated by note #28 of the revised detailed district development plan. The proposal is designed to share utility hookups and service entrances with adjacent developments as the existing shopping center provides utility connections. The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. ADA parking spaces are provided immediately adjacent to pedestrian gathering spaces and primary building entrances; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because the proposed building materials are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro. The design of the entertainment facility integrates with recently approved development at the Center. The netting and poles of the golf driving range are necessary to maintain public safety. The proposal does not constitute a non- residential expansion into an existing residential area as the requested change in zoning is from C-1 to C-2 within the Regional Center form district. Noxious odors or emissions do not appear to be associated with the proposed zoning district or use beyond those expected of vehicular traffic associated with a regional shopping center. The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities as the Traffic Impact Study submitted with this application concluded, "There will be a manageable impact to the existing highway network, with Levels of Service remaining within acceptable limits. The delays experienced in the area will increase within acceptable limits, thus no improvements to the roadway system are recommended." The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as the proposed user is a recreational use and lighting is provided and necessary to light the outfield of the golf driving range in the evening. The applicant has provided evidence that demonstrates that the proposed lighting fixtures intended to light the outfield of the recreational use are aimed and focused on the outfield of the golf driving range and light trespass and glare beyond the field perimeter will be highly controlled. It has also been stated that the lighting fixtures will be installed within the golf driving range bays, not atop a roof, and these fixtures provide a high degree of cutoff; thus, limiting the impact on the night sky. Lighting within the parking lot is fully shielded. The lighting report concludes that virtually no light trespass will occur past property lines. The proposal is appropriately located for its intensity and located along a transit corridor within an activity center. The proposal provides appropriate transitions between uses that are substantially different in scale and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

intensity or density of development as the proposal calls for the redevelopment of an established regional shopping facility and will maintain current VUA LBAs based on the current extent of impervious surfaces. Trees will be provided as required within ILAs. The structure will be centrally located within the subject site in the area of a former anchor department store. The height of the proposed poles supporting the netting of the golf driving range are necessary to provide for public safety and the entertainment center components are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro. The design of the entertainment facility integrates with recently approved development at the Center. The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another as all planting material required by Chapter 10 of the Land Development Code will be provided and the proposal is located within the current extent of the Regional Center form district which is intended to serve populations of 100,000 or more. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards as the structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety. Parking and loading areas are consistent with the current extent of parking improvements and all planting material will be provided. Loading areas are not adjacent to residential areas. The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots as planting and screening along the public roadways and ILAs will be provided within the parking areas. No parking structures have been proposed, and signs will be compliant with Land Development Code, Chapter 8; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because the proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space as interior planting areas are provided and the project site integrates into a pedestrian plaza recently approved for the Oxmoor center. The project site is located in an area currently occupied by impervious surfaces. The extent of project improvements is consistent with the current extent and does not appear to negatively impact the protected waterway that runs through and under the Oxmoor Center; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because the proposal

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems as the extent of project improvements is consistent with the current extent and does not appear to negatively impact the protected waterway that runs through and under the Oxmoor Center. The proposal includes the adaptive reuse of an area previously used for an anchor department store, and the subject site is located in an area of existing impervious surfaces. The proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the proposal is located within the current extent of regional shopping center and Regional center form district. It is supported by an arterial roadway with direct access to an interstate. Primary access will be obtained from the arterial roadway via Oxmoor Lane and Christian Way; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means. Public sidewalks and connectivity to these walks is provided. The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development and adequate street stubs as internal access from Oxmoor Lane to Christian Way is being maintained and primary access from all direction is obtained via these roadways from Shelbyville Road. No street stub are needed as periphery streets provide adequate access. Right-of-way dedication has not been required. The proposal includes adequate parking spaces to support the use as 374 parking spaces above the minimum have been provided. The proposal provides for joint and cross access through the development and to connect to adjacent development sites as the shopping center shares parking among all tenants and periphery roadways provide adequate access to nearby developments; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because adequate stub streets are provided as periphery roadways provide adequate access to nearby developments. Access to

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

the subject site is from existing access and does not require traffic to travel through lower intensity areas. No nuisances are created by the existing access as it is from an arterial roadway with direct interstate access. The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity as the subject site is within an existing Regional Center intended to serve a population of greater than 100,000 and the subject property is served by high frequency TARC route #19. Continued internal access from Christian way to Oxmoor Lane is retained. Further, sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. Bike parking is provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because the site contains a protected waterway. The proposal does not impact this waterway beyond the current conditions; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the proposal is located in an area served by existing utilities or planned for utilities. The proposal has access to an adequate supply of potable water and water for fire- fighting purposes. 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 Commission further finds that the proposal complies with the Intent and Policies of Guideline 1 - Community Form. The subject property is located in the Regional Center Form District, which is an ideal fit for the applicant's proposed use. The proposed C-2 Commercial zoning is appropriate for a Regional Center, which is

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

intended to contain a mixture of high intensity commercial uses including regional shopping and entertainment facilities. The subject property is connected to the existing Oxmoor Center Mall, which contains shopping, restaurant, and entertainment uses. The subject property is surrounded by commercial uses to the north across Shelbyville Road, to the northeast across Christian Way, and to the northwest across Oxmoor Lane. The subject property is surrounded by multi-family and undeveloped properties to the south, southeast, and southwest, all of which are zoned for future commercial and multi-family development. The subject property is in an area benefitted by regional connectivity and transportation infrastructure. Oxmoor Center Mall sits directly on Shelbyville Road, a major arterial, and is served by Interstate 264 less than a quarter of a mile to the west. The subject property is connected to Shelbyville Road by divided four-lane roads to the west and east, Oxmoor Lane and Christian Way, respectively. The subject property is also served by TARC. The proposal will also enhance the appearance and cohesion of the Oxmoor Center Mall property as a whole bringing the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and Policies of Guideline 2 - Centers. The proposed redevelopment will leverage and enhance the existing activity center at the Oxmoor Center Mall site, which is consistent with the Cornerstone 2020 Comprehensive Plan goal of promoting efficient land use and investment in existing infrastructure. The proposed redevelopment will utilize the existing parking and transportation infrastructure at the Oxmoor Center Mall site, and add a diversity of uses to the site that is needed; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and Policies of Guideline 3 – Compatibility. The subject property is the best location for the proposed redevelopment in our community. The subject property is connected to the existing Oxmoor Center Mall, which contains regional-scale shopping, restaurant, and entertainment uses that are complementary to the proposed use. The subject property is surrounded by other similar commercial uses, including offices, retail stores, car dealerships, shopping centers, and restaurants. The subject property is surrounded by the undeveloped properties to the south, southeast, and southwest, which are all zoned for future commercial, office and multi-family development. The subject property is well-served by existing transportation infrastructure, with easy access to Interstate 264 to the west via Shelbyville Road, and access to Shelbyville Road via both Oxmoor

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

Lane and Christian Way. Since the original design for the property was made public, the applicant has made a number of refinements to the design to address neighborhood concerns about noise, traffic, and lighting. The three-story structure and driving range outfield have been moved 200 feet to the west and closer to Interstate 264 to reduce noise and lighting impacts and enhance traffic flow. The nearest residential uses will now be more than a quarter of a mile away from the proposed redevelopment. More than 90 percent of the nearby City of Hurstbourne homes will be a half mile or farther from the subject property. The applicant has proposed to install LED lighting below the roof line of the building to reduce light impacts. The applicant has also agreed to paint the net poles around the driving range to better blend with the surroundings and reduce visual impacts. The applicant has engaged noise, traffic, and lighting consultants to study and recommend further proposals to enhance the proposed design and ensure that residents in nearby Hurstbourne are not adversely affected. Copies of these studies are attached to this application. The sound study demonstrates that there will be no perceptible impact on residences to the east of the subject property. The lighting study demonstrates that the proposed redevelopment will both comply with the LDC's requirements regarding light trespass and improve over the existing situation; and

WHEREAS, the Commission further finds that that the proposal complies with the Intent and applicable Policies of Guidelines 4 - Open Space and 5 – Natural Areas and Scenic and Historic Resources. The proposed redevelopment will substantially improve the open area at the southern end of the Oxmoor Center Mall. The applicant's proposed three-story structure will be separated from the southern end of the enclosed Oxmoor Center Mall structure by new open space that will allow pedestrian access between the two sites. The southern end of the Oxmoor Center Mall is proposed to be redeveloped into two restaurants with outdoor seating facing the proposed driving range, and a third free-standing restaurant between Oxmoor Center Mall and the applicant's redevelopment that will also feature outdoor seating facing the shared pedestrian promenade. The subject property is particularly well suited for the proposed redevelopment because it has no natural, scenic, or historical resources on the subject property. Through the redevelopment of the parking area, over an acre of new green space will be created on the subject property. In addition, the applicant will plant at least 150 new trees on the subject property; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 6 - Economic Growth and Sustainability. The proposed redevelopment is exactly the kind of redevelopment and revitalization project this Guideline promotes. The southern portion of Oxmoor Center Mall, formerly home to the Sears department store, has been vacant since October 2017. The proposed redevelopment will follow the national trend of revitalizing enclosed malls by adding unique entertainment uses that cannot be replicated by internet retailers. In the early 20th Century, malls were community gathering spaces clustered in downtown areas. Then, in the 1950s to 1970s, the development of large suburbs outside of city centers saw the rise of suburban enclosed malls, such as Oxmoor Center and Mall St. Matthews. The current national trend is for retail to move either online or back toward downtown city centers, and enclosed suburban malls have had to adapt by adding unique entertainment uses, such as movie theaters, large-format video arcades, and other sports entertainment facilities that offer experiences that cannot be replicated on the internet. The proposed redevelopment follows this trend, and will offer the Oxmoor Center Mall site a fresh and unique regional attraction that will bring hundreds of new jobs to the area and induce further economic development in the area; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 7 - Circulation. The proposed redevelopment will retain the three existing direct access points to its parking lot- one directly from Oxmoor Lane to the west, one directly from Christian Way to the east, and a third access point to the south from a driveway running along the southern edge of the property that connects to Oxmoor Lane. Both Oxmoor Lane and Christian Way are divided four lane roads that connect directly to major arterial Shelbyville Road to the north, which connects to Interstate 264 less than a quarter of a mile to the west. The proposed redevelopment will also connect internally to the Oxmoor Center Mall parking lots to the north. The applicant is also conducting a traffic study in order to determine whether any roadway improvements will be necessary; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 9 - Bicycle, Pedestrian and Transit. Pedestrians will be able to access the proposed redevelopment through the new south entrance of the Oxmoor Center Mall, which will be connected to the proposed redevelopment via a new pedestrian promenade that will also connect to the three proposed restaurants with outdoor seating. The proposed redevelopment also includes new pedestrian

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

sidewalks along Christian Way that will connect the subject property to the open space to the southeast, and also improve pedestrian access from the City of Hurstbourne neighborhoods to the east. The proposal will contain bicycle parking facilities as required by the LDC. TARC bus stops are located to the north of the subject property along Shelbyville Road at the intersections with Oxmoor Lane and Christian Way, providing easy access to Oxmoor Center Mall and the proposed redevelopment; and

WHEREAS, the Commission further finds that the proposal complies with the Intents and applicable Policies of Guidelines 10 – Flooding and Stormwater and 11-Water Quality. The proposed redevelopment will decrease the impervious area of the subject property by approximately 48,000 square feet, and will provide floodplain and drainage improvements as required by MSD; and

WHEREAS, the Commission further finds that the proposal complies with the Intent and applicable Policies of Guideline 12-Air Quality. The applicant is conducting a traffic study in order to determine the potential impact on area roads from the proposed redevelopment. However, given the existing Oxmoor Center Mall and other commercial uses nearby along high-traffic Shelbyville Road, the proposed redevelopment should generate fewer trips than the retail space it is replacing. The proposed redevelopment also contains new sidewalks along Christian Way which will facilitate pedestrian access to the Oxmoor Center site from nearby residential areas; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable Policies of Guideline 13-Landscape Character. The proposal includes improved landscaping, tree canopy, and parking lot lighting that will improve the appearance and visual impact of the subject property. The proposed redevelopment includes over one acre of reclaimed green space within the Oxmoor Center parking lot. The applicant will provide a more detailed landscape plan before the Planning Commission public hearing on the proposed redevelopment; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change-in-zoning from C-1 to C-2, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Conditional Use Permit

00:48:30 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, and deliberations heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal is consistent with the Comprehensive Plan as the proposed building materials are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro and setbacks, lot dimensions and building heights have demonstrated compatibility with the form district and surrounding area. The proposal contributes to the identity of the regional center as a focal point for transit from homes and workplaces. Additionally, a Regional Center form district is intended to serve a market area for a population of at least 100,000 and the proposed use provides a regional attraction and destination point. Redevelopment and infill development are also encouraged within the form district. The design of the entertainment facility integrates itself with a recently approved development at the Center. The structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety; and

WHEREAS, the Commission further finds that the proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as the proposed user is a recreational use and lighting is provided and necessary to light the outfield of the golf driving range in the evening. The applicant has provided evidence that demonstrates that the proposed lighting fixtures intended to light the outfield of the recreational use are aimed and focused on the outfield of the golf driving range and light trespass and glare beyond the field perimeter will be highly controlled. It has also been stated that the lighting fixtures will be installed within the golf driving range bays, not atop a roof, and these fixtures provide a high degree of cutoff; thus, limiting adverse impacts on the night sky; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the proposal is compatible with surrounding uses and the general character of the form district as the design of the entertainment facility integrates itself with a recently approved development at the Center. The structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety. The Traffic Impact Study provided as part of this application concluded that impacts are manageable and made no recommendations for roadway improvements; and

WHEREAS, the Commission further finds that necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

WHEREAS, the Commission further finds that the proposal complies with the following specific standards required to obtain the conditional use permit requested:

Golf Driving Ranges and Miniature Golf Courses may be allowed in the C-2, C-M, M-1, M-2, M-3, and EZ-1 Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements.

- A. All buildings and structures shall be at least 30 feet from any property line.
- B. Protection of Adjacent Properties - Fences, plantings, or sufficient area shall be provided to insure the safety and protection of persons on all adjacent land. Any netting used for the protection of adjacent properties shall observe yard and height requirements of the district in which it is located.
- C. Signs - Except in districts where signs are allowed, one non-flashing sign, not to exceed 60 square feet in area and not to exceed 10 feet in height, may be provided at the major entrance.
- D. Driving Directions - All golf ball driving directions shall be away from any street, highway or residential area.

The Commission finds that the requested conditional use permit meets the intent of each part as all buildings and structures are 30' from the abutting right-of-way of the redevelopment area, netting has been provided to insure the safety and protection of

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

persons within the subject area and adjacent property, signage will be complaint with Chapter 8 of the Land development Code, and while the orientation of the range faces a public street and residential area within the general vicinity, the site maintains frontage on two public roadways and sufficient distance away from these streets and all residential areas has been provided as the golf driving range is centrally located in the area of a former anchor department store. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit for Golf Driving Range (LDC 4.2.58).

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Variances

1. **Variance #1** from Land Development Code (LDC), section 5.3.3.C.2.a to allow the primary structure to exceed the maximum street side yard setback of 275' along Christian Way and Oxmoor Lane as shown on the revised detailed district development plan.
2. **Variance #2** from LDC, section 5.3.3.C.2.d to exceed the maximum permitted height of 150' to allow a pole height of 175' for driving range netting.
3. **Variance #3** from LDC, section 4.8.3 to allow for parking facility encroachments into the 100' protected waterway buffer as shown on the revised detailed district development plan.

00:49:28 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's justification statement, was adopted:

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

(Variance #1) WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare as the location of the primary structure is centrally located in the area of a former anchor department store and the site is maintains frontage on two public roadways. The setback will not impact the safe movement of pedestrians or motorists and enables the continued movement of vehicles and transit from Oxmoor Lane to Christian Way; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the primary structure is located in the area of a former anchor department store and maintains a similar setback to public roadways; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as sight lines for the movement of pedestrians and motorists are not impacted and the proposal calls for the redevelopment of a regional shopping center; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the location of the primary structure allows for proper vehicular circulation and spacing between public streets and residential uses within the general vicinity; 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 or the same zone as the subject site contains frontage on two public roadways and is a large development within the center; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the location of the primary structure is consistent with the current location of a former anchor department store and pedestrian, transit, and vehicular accommodations have been made to appropriately design the subject site and integrate into the existing center; 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 zoning regulation from which relief is sought as no development has occurred; and

WHEREAS, the Commission further finds that the proposed variance, which will allow the proposed redevelopment to be set back more than 275 feet from the property line along Christian Way and Oxmoor Lane, will not adversely affect the public health, safety or welfare. The proposed redevelopment will sit almost entirely within the existing

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

footprint of the currently vacant Sears department store, which the applicant proposes to remove and redevelop into a Topgolf, a driving range/restaurant concept. The applicant proposes to reconfigure the existing parking lot that will surround the proposed redevelopment to improve traffic flow and ease of access to Christian Way and Oxmoor Lane, including creating a new dedicated driveway and sidewalk within the parking lot from the western access point at Oxmoor Lane to the facility. The proposal will bring the bulk of the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity as the proposed redevelopment will sit almost entirely within the existing footprint of the Sears department store. The Sears structure is currently approximately 385 feet from the western property line along Oxmoor Lane, and 750 feet from the eastern property line along Christian Way. The proposed building will retain a similar setback from both property lines, but the end of the proposed driving range outfield will be located 215 feet from Christian Way. Previous plans proposed placing the structure 200 feet further to the south and east, but the applicant revised its plans to move the proposed structure back closer to the southern end of Oxmoor Center Mall to reduce noise and lighting impacts; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed building location will allow the applicant to create a more sensitive design that will result in no light or perceptible noise trespass within the Hurstbourne neighborhood. Setting the proposed redevelopment back as close as possible to the southern edge of Oxmoor Center Mall will reduce the light and noise impacts to the surrounding area. The applicant also proposes to create a new dedicated driveway and sidewalk within the western half of the parking lot, which will improve public safety for vehicles and pedestrians access the site from the access point at Oxmoor Lane; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal minimizes the light and noise impacts to the surrounding area while retaining essentially the same footprint as the existing Sears structure. The variance will allow the applicant to redevelop the existing parking lot to bring it into compliance with current design standards, which will improve pedestrian and vehicle safety through new lighting and parking design; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

proposal is to redevelop the existing Sears department store and surrounding parking lots at the Oxmoor Center Mall into a Topgolf, a driving range/restaurant concept. The Oxmoor Center Mall site is unique, and the scale of the existing mall structure and the proposed redevelopment require large parking areas. To minimize noise and light impacts, the proposed redevelopment will sit almost entirely within the existing footprint of the Sears building, which will require the redevelopment to exceed the maximum setback requirements in the Land Development Code; and

WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the size and parking needs of the proposed redevelopment require that it be located more than 275 feet from the east and west property lines in the existing footprint of the Sears building. Strict application of the regulations would force the applicant to move the structure closer to either the east or west property lines, which could increase light and noise impacts to surrounding areas; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the maximum setback requirements to the unique Oxmoor Center Mall property. The scale of the existing mall structure and the proposed redevelopment require large parking areas, and thus variances from the maximum setback requirements. The proposed redevelopment will sit almost entirely within the footprint of the existing Sears structure, the best location for the proposed building; and

(Variance #2) WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare as the height requested for the poles supporting the golf driving netting is necessary to ensure the public health, safety, and welfare of persons visiting the Oxmoor Center and passers-by on nearby roadways; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the requested variance is to exceed a maximum height of 150' and be 175'; a variance of 25'. While the netting slightly exceeds the maximum allowable height, it does not contain a mass or bulk associated with a building of a similar height. Further, all other building materials associated with the proposed use are consistent with the development of the Oxmoor Center and design of recent development in the general vicinity or Regional Centers found elsewhere in Louisville Metro; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the netting supported by the poles are intended to prevent hazards and nuisances associated with the flight of golf balls; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the pole height appears to be necessary to ensure public safety and welfare, as well as preventing hazards and nuisances associated with flight of golf balls; 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 or the same zone as the facility requires netting to ensure public safety; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the height of poles are necessary to support netting that provides public safety and minimizes hazards associated with the flight of golf balls; 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 zoning regulation from which relief is sought as no development has occurred; and

WHEREAS, the Commission further finds that the proposed variance, which will allow for net poles surrounding the applicant's proposed driving range to exceed the 150' maximum accessory building height by 25', will not adversely affect the public health, safety or welfare. In fact, the proposed net poles are a key safety feature of the proposed redevelopment. The proposal is for the net poles to completely encircle the proposed Topgolf outfield on the southern portion of the Oxmoor Center Mall property. The height of the net poles ensures that golf balls do not escape the top of the netting, thus ensuring the safety of pedestrians and vehicles in the parking lot that will surround the driving range; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity, as the net poles are consistent with the commercial character of the subject property and surrounding area. The subject property sits on the southern portion of the Oxmoor Center Mall, which sits within a highly developed commercial corridor along Shelbyville Road designated Regional Center Form District, the most intense commercial form district outside of the Central Business District. Other commercial uses, including retail stores, car dealerships, shopping centers, and restaurants border the Oxmoor Center Mall to the north across Shelbyville Road, to the northeast across Christian Way, and to the northwest across Oxmoor Lane.

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

Undeveloped properties zoned for future multi-family and commercial development surround the subject property to the south, southeast, and southwest. The net poles will not create undue visual impacts, as buildings are allowed a maximum height of 150' within the Regional Center Form District. The nearest residential uses will be a significant distance from the proposed redevelopment and screened by an existing tree line. More than 90 percent of the nearby City of Hurstbourne homes will be a half mile or farther from the subject property; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed net poles are key safety features of the proposed redevelopment that re designed to ensure the safety of pedestrians and vehicles and in the parking lot that will surround the driving range. The applicant does not propose to place any lights or speakers on the net poles, minimizing visual and sound impacts, particularly at night. The applicant also proposes to paint the net poles so that they blend in with the surrounding area, further lessening the visual impact; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal balances the need to ensure the safety of pedestrians and vehicles in the surrounding parking lot with the compact nature of the proposed Topgolf. The 25' variance will allow for the construction of a unique, exciting, and family-friendly entertainment option on the former Sears department store site that is sorely in need of redevelopment; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The variance is the result of the need to erect net poles to ensure the safety of pedestrians and vehicles in the surrounding parking lot near the proposed Topgolf structure. Topgolf is unique to the region. The applicant is not proposing to build a structure that exceeds the height requirements, but rather to build net poles that will serve as a key safety feature for the proposed redevelopment; and

WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the compact nature of the proposed driving range requires taller net poles to ensure that golf balls do not escape over the top of the netting. The proposed variance will permit the applicant to bring its unique driving range/restaurant concept to the region while ensuring the safety of pedestrians and vehicles nearby; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

are, instead, the result of misapplication of the accessory building height requirements the applicant's proposed net poles. The proposed net poles are not truly accessory buildings, but rather a safety feature of the proposed driving range. The applicant has taken steps to ensure that the poles do not have undue visual or noise impacts by agreeing not to place lights or speakers on the poles; and

(Variance #3) WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the protected waterway currently flows through and under the Oxmoor Center; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; and

WHEREAS, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the protected waterway currently flows through and under the Oxmoor Center; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the protected waterway currently flows through and under the Oxmoor Center and existing conditions present a similar encroachment and no greater encroachment into the area appears to be made; 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 zoning regulation from which relief is sought as no development has occurred; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the proposed variance, which will allow the parking area of the proposed redevelopment to encroach into the 100-foot stream buffer, will not adversely affect the public health, safety or welfare. The applicant proposes to reconfigure the existing parking lot that will surround the proposed redevelopment to improve traffic flow and ease of access to Christian Way and Oxmoor Lane, including creating a new dedicated driveway and sidewalk within the parking lot from the western access point at Oxmoor Lane to the facility. The proposal will bring the bulk of the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting. The proposed redevelopment will not expand the footprint of the existing parking area or further encroach into the Beargrass Creek buffer area and will only include internal realignments of the parking area near Beargrass Creek to accommodate the new Topgolf facility; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity as the footprint of the existing parking area will not change and will not further encroach on the buffer adjacent to Beargrass Creek. The proposed internal realignments in the parking area will allow the applicant to bring the existing parking area into compliance with current design standards and add improved landscaping, tree canopy, and parking lot lighting; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed internal realignments in the parking area will improve traffic flow and ease of access to Christian Way and Oxmoor Lane, which will enhance vehicle and pedestrian safety and reduce noise impacts; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal will retain the same footprint as the existing parking area while allowing the applicant to make numerous design updates that will improve the safety and appearance of the parking area. These design updates will reduce the noise and lighting impacts on surrounding areas; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The Oxmoor Center Mall site is unique, and the scale of the existing mall structure and the proposed redevelopment require large parking areas. These parking areas have encroached on the Beargrass Creek buffer since their construction in the early 1980s, and the applicant proposes to simply upgrade the existing parking areas to bring them into compliance with current design standards; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the size and parking needs of the proposed redevelopment require that the parking areas be permitted to encroach on the 100-foot stream buffer area. Strict applications of the regulation would force the applicant to remove the existing parking areas and disturb currently undeveloped land to construct new parking areas nearby; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the stream buffer requirements to the unique Oxmoor Center Mall property. The scale of the existing mall structure and the proposed redevelopment require large parking areas, and thus variances from the stream buffer requirement. The proposed redevelopment will not expand the footprint of the existing parking area or further encroach into the Beargrass Creek buffer area; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the following Variances:

1. **Variance** from Land Development Code (LDC), section 5.3.3.C.2.a to allow the primary structure to exceed the maximum street side yard setback of 275' along Christian Way and Oxmoor Lane as shown on the revised detailed district development plan.
2. **Variance** from LDC, section 5.3.3.C.2.d to exceed the maximum permitted height of 150' to allow a pole height of 175' for driving range netting.
3. **Variance** from LDC, section 4.8.3 to allow for parking facility encroachments into the 100' protected waterway buffer as shown on the revised detailed district development plan.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

Waiver of LDC, Section 10.2.10 to allow for parking facility encroachments into the required 15-foot Vehicle Use Area Landscape Buffer Area (VUA LBA) as shown on the revised detailed district development plan.

00:50:54 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's justification statement, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided to ensure appropriate landscape design and protect the character of roadway corridors; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as existing conditions present a similar encroachment and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided; and

WHEREAS, the Commission further finds that the proposed waiver from the required landscape screening requirements along Christian Way and Oxmoor Lane will not adversely affect the adjacent property owners as the existing parking areas are not

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

screened along these streets, and the applicant proposes to improve the overall appearance of the parking area by bringing the parking areas more into compliance with current design standards. The applicant proposes to improve landscaping, tree canopy, and parking lot lighting. Thus, the proposal will not result in any new unscreened parking and will allow the applicant to improve the overall appearance of the parking areas; and

WHEREAS, the Commission further finds that the proposed waiver will not violate the Comprehensive Plan. The existing parking areas are not screened along Christian Way and Oxmoor Lane, and the applicant proposes other changes to the parking areas that will improve their overall appearance and reduce traffic and light impacts. The proposed redevelopment as a whole will revitalize the currently vacant Sears property, bring an exciting and family-friendly entertainment option to the region, drive economic growth in the existing Regional Center, and bring the southern half of the Oxmoor Center Mall into compliance with current design standards; and

WHEREAS, the Commission further finds that the extent of the proposed waiver of the regulation is the minimum necessary to afford relief to the applicant. The proposed waiver will permit the applicant to retain the existing parking areas while improving their outdated appearance through new landscaping, tree canopy, and lighting; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant as the applicant will not be adding any new unscreened parking and proposes to substantially improve the appearance of the existing parking areas. The existing parking areas are not screened along Christian Way and Oxmoor Lane, and the applicant proposes to improve landscaping, tree canopy, and parking lot lighting; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver** of LDC, section 10.2.10 to allow for parking facility encroachments into the required 15' Vehicle Use Area Landscape Buffer Area (VUA LBA) as shown on the revised detailed district development plan.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

Lighting Report and installation of outdoor lighting in excess of 1,800 lumens located at a height greater than 30'

00:51:50 On a motion by Commissioner Brown, seconded by Commissioner Robinson, the following resolution, based on the evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's prepared lighting report, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Lighting Report and installation of outdoor lighting in excess of 1,800 lumens located at a height greater than 30'.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver of LDC, section 4.1.3 to not provide fully shielded lighting for golf driving range

00:54:39 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, deliberations heard today, and the applicant's justification statement, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the lighting report indicates that the proposed lighting fixtures are aimed and focused on the outfield of the golf driving range for the purpose of lighting the field and light trespass and glare beyond the field perimeter will be highly controlled and minimized. There are no residential uses or other sensitive uses such as churches or schools within 500' and the nearest residential dwelling is over 1,200' from the proposed fixtures; and

WHEREAS, the Commission further finds that Guideline 3, Policy 8 of Cornerstone 2020 calls for mitigation of adverse impacts of lighting from proposed development on nearby properties, and on the night sky. The lighting report indicates that the field lighting will have virtually no light trespass beyond the field perimeter and the golf driving range is encompassed by a parking lot. The distance from the golf driving range bays housing the proposed fixtures to the pavement of the nearest public road is

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

roughly 900' and the nearest dwelling unit is over 1,200 feet from these fixtures. The lighting plan indicates that the fixtures can be highly controlled and landscaping is proposed at the east end of the field perimeter to further mitigate any potential adverse impacts of glare. The applicant has indicated that fixtures will contain a visor to limit upright; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the existing regulation does not appear to be practical for an outdoor recreational facility to appropriately light the field; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the existing regulation does not appear to be practical for an outdoor recreational facility to appropriately light the field and there will be virtually no light trespass beyond the field perimeter. Other measures that exceed the minimums of the district have been included to mitigate potential adverse impacts as a landscape screen at the east end of the field has been proposed; and

WHEREAS, the Commission further finds that Topgolf USA Louisville, LLC (the "applicant") is seeking a waiver of LDC Section 4.1.3.6.2.c, which requires all lighting fixtures over 3,500 lumens to be fully shielded. After an exhaustive search for field lighting that meets the IESNA definition of "fully shielded," the applicant has been unable to locate a fixture that would simultaneously meet the "fully shielded" requirement and light the field. In fact, the applicant has worked with a member of the IESNA Sports Lighting Committee to come up with the lighting design proposed, which complies with LDC Section 4.1.3.6.6, which covers recreational lighting. As shown in the lighting report performed by Keith Pharis, PE, the proposed lighting plan for Topgolf and updated parking lot lighting at Oxmoor Center will produce less up-light, spill-light and glare than the parking lot lighting currently in place at Oxmoor Center; and

WHEREAS, the Commission further finds that Chapter 4 of the Land Development Code contains two contradictory requirements. Section 4.1.3.6.2.c states that all luminaires in all form districts that are over 3,500 lumens must be fully shielded. Section 4.1.3.6.6, titled Recreational Facilities, states that recreational lighting (for sports fields) must be fully shielded or designed with sharp cut off capability, so as to minimize up-light, spill-light, and glare. Unfortunately, the intended distinction between recreational lighting and all other lighting (i.e. sidewalk, parking lot, architectural, etc.) was not incorporated into Section 4.1.3.6.2.c. According to the applicant's lighting expert, there are no recreational lighting fixtures under 3,500 lumens, which is the equivalent of approximately three 75-watt lightbulbs. Therefore, according to a strict

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

reading of the LDC, all recreational lighting must be "fully shielded." Through the applicant's lighting expert and manufacturer, the applicant has explored a variety of fixtures in order to attempt to provide lighting that meets these two incongruous requirements. But there are no lighting fixtures available for Topgolf's recreational field applications that meet the "fully shielded" requirement. Because there are no applicable fixtures that meet the "fully shielded" requirements of Section 4.1.3.B.2.c, the applicant is seeking a waiver; and

WHEREAS, the Commission further finds that the proposed waiver will not adversely affect adjacent property owners. As stated in the lighting report from Keith Pharis, PE, the proposed lighting will result in less glare, less spill-light and less up-light than the existing parking lot fixtures at Oxmoor Center. According to Mr. Pharis's lighting report, "The proposed design meets or surpasses the LDC restrictions on [light trespass, light pollution and glare] and improves over the current installation (which does not have glare control and fails to meet the light trespass requirements). The report goes on to state that "The current fixtures are also "high glare" luminaires with no shielding or cutoff optics and are highly visible from adjoining properties." Allowing the proposed development will reduce glare, reduce up-light and reduce spill-light on adjacent properties to levels that are compliant with Section 4.1.3.8.11; and

WHEREAS, the Commission further finds that the proposed waiver will not violate the Comprehensive Plan. The proposed waiver will allow for lighting that meets the intent of Section 4.1.3 and the requirements of 4.1.3. 8.6, while allowing for highly focused but not fully shielded fixtures. As stated above, fully shielded recreational lighting is not commercially available for field lighting. Guideline 3-Compatibility states that applicants should mitigate adverse impacts of lighting from proposed development on nearby properties and on the night sky. The proposed lighting system, including the parking lot revision, will result in less glare, less up-light, and less spill-light, the goal of this policy. According to Mr. Pharis's report, the [Topgolf] fixtures have tightly controlled optical patterns that are designed specially to light the field with a high degree of accuracy and virtually no light trespass beyond the field perimeter. In addition, Topgolf will install a dense evergreen screen along the end of the outfield, which will shield the lights even further; and

WHEREAS, the Commission further finds that the extent of the waiver is the minimum necessary to afford relief to the applicant. Due to the lack of available fully shielded recreational fixtures, no recreational facility can comply with Section 4.1.3.B.2.c. Granting the waiver will allow the proposed development to provide lighting that complies with Section 4.1.3.B.6 and 4.1.3.6.11.; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the applicant has incorporated other design measures that compensate for its non-compliance with the fully shielded requirement. The proposed Topgolf and Oxmoor parking lot renovation will result in less glare, less up-light, and less spill-light than the existing condition. In fact, the revised lighting, including Topgolf, will result in a net lumen reduction on the east side of the former Sears building of over 1,100,000 lumens (Existing: 3,675,000 lumens-Proposed: 2,544,000 lumens=Net Reduction-1,131,000 lumen reduction). All in all, the proposed redevelopment will result in a dramatic improvement in lighting conditions; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of LDC, section 4.1.3 to not provide fully shielded lighting for golf driving range.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Revised Detailed District Development Plan and Binding Elements

00:55:43 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard at the last two Planning Commission public hearings, and deliberations heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. The extent of project improvements is consistent with the current extent and improvements do not appear to negatively impact the protected waterway that runs through and under the Oxmoor Center. The proposal's drainage plans have been approved by MSD. The redevelopment area will maintain current VUA LBAs and all planting material and screening required will be provided. Trees will be provided as required within ILAs and minimum standards for tree canopy compliance will be met; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the subject property is served by high frequency TARC route #19 and continued internal access from Christian way to Oxmoor Lane is retained. Sidewalks along the public road frontage and connection from these sidewalks to primary building entrances and pedestrian gathering places are provided. The Traffic Impact Study concluded that there will be a manageable traffic impact and no recommendations for further improvements to the existing vehicular network serving the site were made. ADA and bicycle parking spaces are provided immediately adjacent to pedestrian gathering spaces and primary building entrances. The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking. Oxmoor Center is subject to a recorded Crossover Access agreement as indicated by note #28 of the revised detailed district development plan; and

WHEREAS, the Commission further finds that the proposal provides open space that helps meet the needs of the proposed development and community as interior planting areas are provided and the project site integrates into a pedestrian plaza recently approved for the Oxmoor center. The project site is located in an area currently occupied by impervious surfaces; and

WHEREAS, the Commission further finds that 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 Commission further finds that setbacks, lot dimensions and building heights are compatible with the existing and projected future development of the area as the proposed building materials increase the new development's compatibility. The proposed building materials are consistent with materials found on current retail and entertainment development in the general vicinity and throughout Louisville Metro. The design of the entertainment facility integrates itself with a recently approved development at the Center. The structure is being centrally located in the area of a former anchor department store and the subject property contains frontage on two public roadways. Distance from each roadway is being provided to accommodate parking and the outfield of the golf driving range. Although the height of the proposed poles supporting the netting exceeds form district standards by 25', the height requested appears to be necessary for public safety. All planting material, screening, and tree canopy as required by Chapter 10 of the Land Development Code will be provided; and

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified. Conformance to the comprehensive plan has been thoroughly detailed in the *Cornerstone 2020 Staff Analysis* found in *Attachment 3* of this report. The proposal contributes to the identity of the regional center as a focal point for transit from homes and workplaces and provides for the incorporation of a regional attraction and destination point for entertainment in the area of a former anchor department store. The proposal builds upon an existing regional shopping center within the current extent of the Regional Center Form District. The proposal provides for the efficient movement of pedestrians, vehicles, transit, and bicycles through and around the site and is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities. It also maintains a high level of transit access and connectivity. Adequate parking to support the use has been provided. The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as the proposed user is a recreational use and lighting is provided and necessary to light the outfield of the golf driving range in the evening. The applicant has provided evidence that demonstrates compliance with the Comprehensive Plan. The redevelopment of the subject property allows for the continued and viable provisions of goods, service, and entertainment to a market population of greater than 100,000 as called for in the form district; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan for golf driving range and entertainment center subject to the deletion of existing binding elements for the redevelopment site only, and **SUBJECT** to the following binding elements for the redevelopment site only:

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

construction of Bunsen/Bowling Parkway, in part or whole. The Developer should also furnish additional mitigation recommendations, as required, at impacted intersections.

8. Parking facilities as shown on the approved development plan shall be restricted to the parking of vehicles for guests, employees, and customers of the Oxmoor Center only.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 1, 2018 Planning Commission meeting.
10. Enhanced landscaping that is substantially similar to that depicted in the Enhanced Landscape Exhibit contained in the applicant's lighting waiver presentation at the October 15, 2018 Planning Commission public hearing shall be provided.
11. Field lighting shall be dimmed by 50% at the end of business each evening and be fully shut off by two hours after the close of business.
12. Two hundred linear feet of sidewalk from the proposed temporary bus stop on Christian Way to the sidewalk in front of Macy's shall be constructed. Should other legal obligations prevent this sidewalk from being constructed; the applicant will work with TARC to determine an acceptable alternative. Construction plans bond and permit from Metro Public Works required prior to the issuance of a building permit. Sidewalks shall be constructed prior to date of the issuance of the Certificate of Occupancy.
13. Operating hours shall be from 9:00 a.m. to 12:00 a.m. Sunday through Thursday, and 9:00 a.m. to 2:00 a.m. Friday and Saturday.
14. An updated sound study shall be performed and provided to the Louisville Metro Planning Commission for review within 180 days of the first day of operation. This study shall include peak operating hours and measurements taken from those locations previously indicated in the sound study of record. Noise levels attributed to the TopGolf facility shall be substantially similar to the sound study of record, unless otherwise approved by the Louisville Metro Planning Commission. Review of the updated study shall occur in a Business Session of the Planning Commission. If additional information or testimony is required, the Planning Commission may elect to hold a public hearing and determine notification requirements.

PLANNING COMMISSION MINUTES
October 18, 2018

BUSINESS SESSION

CASE NO. 18ZONE1014

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.