

PLANNING COMMISSION MINUTES
August 20, 2020

PUBLIC HEARING

CASE NO. 20-ZONE-0041

Request: Change in Zoning from R-4 to C-1 with General and Detailed District Development Plan, landscape waiver and maximum setback variances

Project Name: Liberty Financial

Location: 7600-7602 Bardstown Road and 9700 Bartley Drive

Owner: Gary and Susanne Jenkins; Susanne Jenkins Revocable Trust; and Gary Jenkins Revocable Trust

Applicant: Evansville Teachers Federal Credit Union

Representative: Bardenwerper, Talbott, and Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 22 – Robin Engel

Case Manager: Joel P. Dock, AICP, Planner II

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

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

Agency Testimony:

01:45:43 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Kevin Young, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059

Summary of testimony of those in favor:

01:52:33 Mr. Pregliasco gave a power point presentation. The proposal is a credit union.

02:01:33 Mr. Young explained the revisions. Bartley Dr. will be realigned with a median and the existing Bartley Dr. will be turned into a right-in right-out. The right-in

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will have a deceleration lane and will taper off. There will also be an additional left-turn lane on Bardstown Rd. heading north. A ditch will be directed for storm water quality toward the detention basin and redirected back to the existing ditch going to the blue-line stream.

02:05:36 Mr. Pregliasco said this case went to LD&T 2 times.

Mr. Pregliasco showed renderings of the credit union and the elevations.

02:09:15 Ms. Zimmerman stated the traffic impact study was conducted in response to the Ky. Transportation Cabinet as to whether or not protected left turn phasing would be provided on Bardstown Rd. to Bartley Dr.

Ms. Zimmerman gave a summary of her findings.

02:14:15 Commissioner Mims said he's surprised the traffic study shows how bad traffic is. Is it because of Southpoint? Ms. Zimmerman said it's a unique situation where Southpoint's approval was based on that being a three-legged intersection to allow the pedestrian movements that need to be accommodated by adding the 4th leg of the intersection. It surprisingly creates more delay.

02:15:48 Commissioner Mims asked if the lights are synchronized from Walmart through the intersections or is that the recommendation. Ms. Zimmerman said they are synchronized from the Gene Snyder to Colonel Hancock.

02:19:32 Commissioner Carlson said a property owner (letter in packet) has asked for a privacy fence. Will it be provided? Mr. Pregliasco said screening will be provided with a fence or landscaping. Mr. Dock said he spoke (email) with Ann Richard and she said a fence will be provided instead of landscaping for that individual. Mr. Pregliasco said he would agree to a binding element.

02:22:01 Commissioner Carlson said the C-1 will allow more intense uses (in the future). Is there anything that can be done to trigger a review? Mr. Pregliasco said notice can be provided and it can be sent to the entire Planning Commission. Mr. Dock suggests the following binding element: Upon a change of use on tract 1, which would ultimately require a revised development plan, that a revised traffic impact study shall be submitted for review along with any subsequent revised development or detailed plans on the site. A binding element can be written up in the general plan elements.

The following spoke in opposition to this request:

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Jon Baker, Wyatt, Tarrant and Combs, 400 West Market Street, Suite 2000, Louisville, Ky. 40202

Jeff Weller, Stan Tech. Consulting Services, 801 Jen Franklin Road, Suite 300, Raleigh, North Carolina 27606

Summary of testimony of those in opposition:

02:26:30 Mr. Baker stated he represents Southpoint Partners, LLC.

Mr. Baker provided comments for the record, concerns and questions relating to traffic, infrastructure and the signalization of the proposed fourth leg into the Bartley Dr. /Bardstown Rd. intersection. The proposal is a good start but why was this intersection the only one in the traffic study and why didn't it include the other signals that are coordinated? How will they be impacted when the fourth leg is implemented?

02:29:14 Mr. Baker stated (in the past) Commissioner Tom Stockton said when the fourth leg is plugged in, if there is not another through-lane built between the off ramp of I-265 down through Brentlinger, it will fail.

02:32:59 Mr. Weller discussed the lanes and operations included in the study of Bardstown Rd., Southpoint Blvd. and Bartley Rd.

02:39:44 Commissioner Mims stated, if a split-phase is done, there will be a loss of some level of service in the efficiency of the intersection. Mr. Weller said yes.

02:41:03 Commissioner Carlson asked Mr. Weller, what is your proposed solution? Mr. Weller said his proposal would be to look at the intersection with a different lane configuration in conjunction with including those improvements in revising the corridor study (from Gene Snyder to Cedar Creek) to determine the impacts from adding those phases and those lanes to the intersection and what effect that would have on the network.

Rebuttal

02:42:42 Mr. Pregliasco stated the same concerns were raised at the first LD&T meeting and it resulted in the complete traffic study. We addressed what KTC, Transportation Planning and Public Works indicated and even expanded the scope.

02:45:16 Mr. Young said Bardstown Rd. did not warrant a traffic study but it was performed anyway. The right-in right-out did require a right turn lane and a deceleration lane was added as well. Heading north on Bardstown Rd. the left turn lane allowing the traffic to get out of the 2 lanes of traffic on Bardstown Rd. has been added for sufficient

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storage as required by Ms. Zimmerman's traffic volume. That could be extended if another user were to come in on tract 2.

02:47:07 Ms. Zimmerman stated the Kentucky Transportation Cabinet, KTC, will require a permit for the construction of this intersection. It must meet all their requirements. KTC gets the final say as to how this intersection will be designed and whether or not they can live with the delays created by realigning Bartley Dr. and creating a four-legged intersection.

Deliberation

02:51:14 Commissioner Howard said she agrees with the staff report.

02:51:51 Commissioner Carlson said he's in agreement with the rezoning, except the traffic.

02:52:25 Commissioner Peterson said he's in favor of all aspects of the plan. The traffic issues have been addressed and the state will have the final say.

02:53:13 Commissioner Mims said he would hate to see the improvements (made by the state) lost. It would be interesting to look at the impact of tract 2.

02:54:08 Commissioner Brown said there is a Congestion Mitigation and Air Quality grant, called Connections 21 awarded last year. It gave metro \$1.45 million to replace all the traffic controllers along this corridor, plus other major corridors. It's going to be the hardware we need to run the software that will make these signals more adaptive. The state will evaluate this again. Overall, compared to Southpoint Commons, this is a very small trip generator.

02:55:39 Commissioner Daniels agrees with the other commissioners and is in support of the proposal.

02:56:10 Commissioner Seitz agrees with the total plan.

02:56:22 Commissioner Lewis stated the safety gained is an acceptable tradeoff for an extended wait time.

02:57:05 Chair Jarboe agrees with the commissioners. The credit unit will not generate a lot of traffic.

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An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from R-4 to C-1

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district boundaries slightly encroach upon a residential area, but overall the boundaries maintain consistency with the depth of commercial development along the corridor to the north and south of I-265. Appropriate transitions will be provided. These residential areas are not used as a means of access to the development site; the proposed medium-intensity land use is appropriately located along a major arterial roadway which provides transit service, as well as convenient access to I-265. Transportation infrastructure is adequate to serve the development; the proposed district allows for neighborhood serving uses that serve existing communities. The site is along a roadway intended to serve large volumes of traffic; no adverse impacts of noise are expected as the set of uses permitted within the district are not generally high generators of noise; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed district is appropriately located for its intensity within the NFD and allows for neighborhood serving uses; the proposed district is within the NFD at an appropriate location with access that does not conflict with lower density areas; the proposed district concentrates commercial districts along major transportation corridors to efficiently use land; the proposal allows for a mixture of compatible uses within proximity and adjacent to other non-residential uses and existing and planned neighborhoods; the proposed district allows for mixed-use development including residential and office components; the proposal results in new development for commercial uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the proposal will provide required landscape plantings and material. It is not impacted by protected waterways or steep slopes; no wet or highly permeable soils, severe, steep or unstable slopes appear to be present on site. Sanitary sewers and drainage will be provided as required by MSD; no changes to flood-prone areas and other features vulnerable to natural

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disasters are impacted by the proposed district. The site is not located within the floodplain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, an existing home on-site is over 50 years old and potentially eligible for the National Register of Historic Places. This site will be subject to the requirements of the Wrecking Ordinance Subsection 150.110 and a potential 30-day hold on the issuance of the permit. A demolished 2-story historic log home had previously been surveyed on the subject properties (JF 146); and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed district is located along Bardstown Road, a major arterial roadway with transit service and I-265 connectivity. The site is located near employment centers, parks, and similar services and amenities as permitted in the requested district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the proposed district does not require travel through lower density/intensity areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district allows for complementary neighborhood serving businesses and uses to encourage short trips easily made by walking or bicycling. Access for pedestrian will be made to all public roadways (existing/proposed) to connect to adjacent and nearby development; the proposed district allows for complementary neighborhood serving businesses and uses that may reduce vehicle miles traveled and increase accessibility via bike, car, transit, and foot to neighborhood serving goods and services. The proposal concentrates additional commercial services at an appropriate location to satisfy this policy; the proposal is located along a transit corridor and provides connectivity to employment centers and amenities along the corridor and throughout Louisville metro. Access for pedestrian will be made to all public roadways (existing/proposed) to connect to adjacent and nearby development; the proposed district will provide for an appropriate and safe level of connectivity for the development site, area residents, and future development. The district serves nearby residences, as well as those utilizing the corridor and the interstate. Locating in proximity to other commercial activities helps to encourage multi-modal interaction between uses; roadway improvements are being made to appropriately realign a roadway for safe, convenient access to commercial and residential development; Roadway improvements are being made to appropriately realign Bartley Drive to provide for safe, convenient access to commercial and residential development at Bardstown Road and Southpointe Blvd.; necessary

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improvements will be made to facilitate connectivity at the signalized intersection for current and future development along Bartley Drive; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, sanitary sewers and drainage will be made available to serve the development; an adequate supply of potable water and water for fire-fighting purposes will be available.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to C-1, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

Waiver of Land Development Code (LDC), section 10.2.10 to allow for an encroachment into the 15' vehicle use area (VUA) landscape buffer area (LBA) along re-aligned Bartley Drive

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

WHEREAS, the waiver will not adversely affect adjacent property owners as the encroachments are located along a public roadway as a result of the realignment of Bartley Drive to serve adjacent property owners. All required planting material will be provided; and

WHEREAS, 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 proposed development will provide all required planting materials to protect the public roadway from visual intrusions; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the

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encroachments are a result of the configuration of the development with the realignment of Bartley Drive; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the encroachments are a result of the configuration of the development with the realignment of Bartley Drive, the waiver will not adversely affect adjacent property owners, and the waiver does not violate specific provisions of Plan 2040.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver of Land Development Code (LDC), section 10.2.10 to allow for an encroachment into the 15' vehicle use area (VUA) landscape buffer area (LBA) along re-aligned Bartley Drive.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

Variance from LDC, section 5.3.1.C.5 to allow for proposed structures to be in excess of the 95' maximum setback from Bardstown Road and 80' maximum setback from Bartley Drive

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

WHEREAS, the requested variance will not adversely affect public health, safety, or welfare as the requested additional setback does not impact the safe movement of pedestrians and vehicles, and the configuration of the development with the lot is a result of the realignment of Bartley Drive to provide convenient access for development to a signalized intersection. Additionally, architectural features along each right-of-way (Bardstown Road/Bartley Drive) are consistent with the character of the area and form district; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as architectural features along each right-of-way (Bardstown Road/Bartley Drive) are consistent with the character of the area and form district. The facades within each setback are variable; and

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WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the requested additional setback does not impact the safe movement of pedestrians and vehicles; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the requested setback will not alter the essential character of the area of create a public hazard; and

WHEREAS, 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 a public roadway is being prosed resulting in the application of the setback as shown; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as the requested additional setback does not impact the safe movement of pedestrians and vehicles, and the configuration of the development with the lot is a result of the realignment of Bartley Drive to provide convenient access for development to a signalized intersection. Additionally, architectural features along each right-of-way (Bardstown Road/Bartley Drive) are consistent with the character of the area and form district; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 proper relief is being sought.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from LDC, section 5.3.1.C.5 to allow for proposed structures to be in excess of the 95 foot maximum setback from Bardstown Road and 80 foot maximum setback from Bartley Drive.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

General District Development Plan

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

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WHEREAS, 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 conserved as the site does not appear to adversely impact these features. Previously demolished structures have been documented and current structures are subject to Wrecking Ordinance Subsection 150.110. The site does not contain protected waterways or steep slopes; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will provided by public sidewalks (existing/proposed), as well as roadway improvements to appropriately realign Bartley Drive to provide for safe, convenient access to adjacent residential and commercial development; and

WHEREAS, the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided; 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 Planning Commission finds, the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the proposed development plan creates development sites for a mixture of compatible uses within proximity and adjacent to other non-residential uses and existing and planned neighborhoods. It is appropriately located along a major arterial roadway providing transit service, as well as convenient access to I-265. Additionally, the site is located near employment centers, parks, and similar services and amenities as permitted within the requested district. The boundaries of the plan maintain consistency with the depth of commercial development along the corridor to the north and south of I-265; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040 as the proposed development plan creates development sites for a mixture of compatible uses within proximity and adjacent to other non-residential uses and existing and planned neighborhoods. It is appropriately located along a major arterial roadway providing transit service, as well as convenient access to I-265. Additionally, the site is located near employment centers, parks, and similar services and amenities as permitted within the requested district. The

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boundaries of the plan maintain consistency with the depth of commercial development along the corridor to the north and south of I-265.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the General District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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. Bartley Drive Realignment:
 - a. Prior to development (includes clearing and grading) of each site or phase of this project, a major subdivision plat realigning Bartley Drive as shown on the approved district development plan shall be recorded.
 - b. A road closure for existing Bartley Drive shall be recorded following the recordation of the major subdivision plat to realign Bartley Drive.
 - c. If the existing Bartley Drive is closed prior to the construction and opening of the new section of Bartley Drive, a bond as determined by the department of Public Works shall be required for the new section of roadway.
 - d. No changes shall be made to the existing Bartley Drive until after the new section of roadway is constructed and open.
4. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. The developer of Tract 1 will construct the easement/agreement areas up to common property lines in conjunction with the development of Tract 1 as shown of the approved district development plan. The developer of Tract 2 will be responsible for the future construction of approved access easement/agreement areas up to the common property line in conjunction with the development of Tract 2.

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5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
7. An 8' privacy-style fence shall be provided along the common property line with 9601 Bartley Drive ("Harkness Property") within the required landscape buffer area.
8. A revised traffic impact study shall be submitted for any change in the use on Tract 1, and in conjunction with the review of a detailed district development plan(s) for Tract 2. Recommendations of these revised studies shall be included with the development of each site.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

Detailed District Development Plan (Tract 1)

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

WHEREAS, the 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 conserved as the site does not appear to adversely impact these features. All required tree canopy and planting/screening material will be provided. The site does not contain protected waterways or steep slopes; and

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WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided by proposed public walks and pedestrian connections to walks along Bardstown Road and realigned Bartley Drive; and

WHEREAS, the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided; 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 Planning Commission finds, the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as architectural features along each right-of-way (Bardstown Road/Bartley Drive) are consistent with the character of the area, proposed development nearby, and form district requirements; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040 as the proposal creates complementary neighborhood serving businesses and uses to encourage short trips easily made by walking or bicycling. Roadway improvements are being made to appropriately realign Bartley Drive to provide for safe, convenient access to commercial and residential development near the development. Access for pedestrians will be made to all public roadways (existing/proposed) to connect to adjacent and nearby development.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan (Tract 1), **SUBJECT** to the following Binding Elements:

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

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- a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - 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
 - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the August 20, 2020 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners as shown of the approved district development plan and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services
3. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
 4. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
 5. 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.

The vote was as follows:

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YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe