

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
February 2, 2017**

A meeting of the Louisville Metro Planning Commission was held on February 2, 2017 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Commission members present:**

Vince Jarboe, Chair  
Jeff Brown  
Rich Carlson  
Laura Ferguson  
Marshall Gazaway  
Lula Howard  
Rob Peterson  
Emma Smith  
David Tomes

**Commission members absent:**

Marilyn Lewis, Vice Chair

**Staff Members present:**

Emily Liu, Planning Director  
Joseph Reverman, Assistant Director  
Brian Davis, Planning Manager  
Brian Mabry, Planning Supervisor  
John Carroll, Legal Counsel  
Julia Williams, Planning Supervisor  
Beth Jones, Planner II  
Joel Dock, Planner I  
Tammy Markert, Engineering Supervisor  
Pamela M. Brashear, Management Assistant

The following matters were considered:

**PLANNING COMMISSION MINUTES**  
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**APPROVAL OF MINUTES**

**JANUARY 18, 2017 PLANNING COMMISSION NIGHT HEARING MEETING MINUTES**

On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on January 18, 2017.

**The vote was as follows:**

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

**NOT PRESENT FOR THIS CASE: Commissioner Lewis**

**ABSTAINING: Commissioners Ferguson, Gazaway, Peterson, Smith and Tomes**

**JANUARY 19, 2017 PLANNING COMMISSION ANNUAL MEETING MINUTES**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its annual meeting conducted on January 19, 2017 at 12:30 p.m.

**The vote was as follows:**

**YES: Commissioners Carlson, Gazaway, Howard and Jarboe**

**NOT PRESENT FOR THIS CASE: Commissioner Lewis**

**ABSTAINING: Commissioners Brown, Ferguson, Peterson, Smith and Tomes**

**PLANNING COMMISSION REGULAR MEETING MINUTES**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its regular meeting conducted on January 19, 2017 at 1:00 p.m.

**The vote was as follows:**

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

**NOT PRESENT FOR THIS CASE: Commissioner Lewis**

**ABSTAINING: Commissioners Ferguson, Peterson, Smith and Tomes**

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**CONSENT AGENDA**

**CASE NO. 15STREETS1018**

Case No: 15STREETS1018  
Request: Closure of unnamed alleys bound by East Breckinridge Street to the south, South Floyd Street to the east, an unnamed alley to the north, and South Brook Street to the west  
Project Name: Village Alley Closing  
Location: 209 East Breckinridge Street  
Owner: VOEB LLC, Ronald W. Stinson, EDL Holdings LLC, Christ Way Missionary Baptist Church and Outdoor Systems Inc.  
Applicant: VOEB LLC  
Representative: George Stinson  
Jurisdiction: Louisville Metro  
Council District: 4 – Barbara Sexton Smith  
Case Manager: **Brian Davis, AICP, Planning Manager**

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.)

**Discussion:**

00:08:36 Mr. Davis discussed the alleys to be closed. The case is in order.

**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.**

On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Consent Agenda item 15STREETS1018.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

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**CONSENT AGENDA**

**CASE NO. 15STREETS1018**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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**PUBLIC HEARING**

**CASE NO. 16SUBDIV1014**

Case No:	16SUBDIV1014
Project Name:	The Estates of Lovers Lane
Location:	6012 Lovers Lane
Owners:	Clyde and Marian H. Caudill
Applicant:	Learnet Inc.
Representative(s):	BTM Engineering, Inc.
Project Area/Size:	18.48 acres
Existing Zoning District:	R-4, Single-Family Residential
Existing Form District:	N, Neighborhood
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
<b>Case Manager:</b>	<b>Joel P. Dock, Planner I</b>

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

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

**Agency Testimony:**

00:11:01 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

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

John Addington, BTM Engineering, Inc., 3001 Taylor Springs Drive, Louisville, Ky. 40220  
Clyde Caudill, 6115 Lovers Lane, Fern Creek, Ky. 40291

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

00:17:55 Mr. Addington gave a power point presentation. There is existing landscaping/buffering around most of the property and there will be some additional plantings. The owner will continue to work with the church on the fence issue. It would be best to allow the new people coming in to decide what, if any, fencing they will want.

00:27:32 Mr. Caudill stated he and his wife have lived there for 28 years and never had a complaint from neighbors. "Because of our age and health, we can no longer

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maintain the property as we have in the past.” “The new property owners will get together with the church and other neighbors and will work out a fence or barrier that will be attractive and agreeable to all concerned.”

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

Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299  
Xiao-An (Sean) Fu, 9807 White Blossom Boulevard, Louisville, Ky. 40241  
Stephen Hoehler, 9894 Fern Creek Road, Louisville, Ky. 40291

**Summary of testimony of those neither for nor against:**

00:34:48 Mr. Porter represents the Louisville Chinese Christian Church. The church would like to split the cost of a fence, \$4500.00 a piece, even though it's not required.

Mr. Porter read a proposed condition of approval: The applicant will construct a 6 foot high solid wood privacy fence, pressure treated along its lot boundary from the northeast corner of the property owned by the Louisville Chinese Christian Church to the proposed stub street if the church will do the following; 1. Pay prior to construction \$4500.00 or ½ the cost of construction, whichever is less; and 2. Install a chain across its entrance from Lover's Lane to prevent entrance, except during church functions.

00:42:22 Mr. Fu stated the church has a lot of activities and a fence would be a nice security measure for all involved. The church is non-profit, but they're willing to pay half for the fence.

00:46:00 Mr. Hoehler said he was not on the list to be notified. The tree line is a concern – he doesn't want them taken out.

**Rebuttal:**

00:51:44 Mr. Addington said lot owners need to be able to choose. It's not a good precedent to set as far as adding a condition of approval.

**Deliberation:**

00:54:30 The commissioners agree that the subdivision is in order, but don't want to impose conditions of approval for the applicant to have to go above and beyond what's required.

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**Subdivision Plan and Binding Elements**

On a motion by Commissioner Peterson, seconded by Commissioner Carlson, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16SUBDIV1014, the Major Preliminary Subdivision Plan and conditions of approval on pages 4 and 5 of the staff report based on the staff report and the testimony presented, **SUBJECT** to the following Conditions of Approval:

**Conditions of Approval**

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from Louisville Metro Public Works.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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 conditions of approval requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

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4. The applicant, developer, or property owner shall provide copies of these conditions of approval 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. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of TCPAs etc.) and other issues required by these conditions of approval.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
6. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
7. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
8. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
9. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's



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labeling. This language shall appear in the deed of restrictions for the subdivision.

10. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1 of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.
11. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
12. 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.
13. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan and construction plan that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
14. If required, and in accordance with Land Development Code, section 4.9.5, a geotechnical report shall be conducted for the site. The results shall be submitted for review prior to construction plan approval and the recommendations of the report shall be carried out during construction on the site.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

Case No: 16zone1008  
Request: R-4 and R-5B to R-6 with variances and waivers  
Project Name: Conti Apartments  
Location: 2019 R Frankfort Avenue, 133 R N. Bellaire Avenue,  
124/126 Vernon Avenue, TB 69E Lots 84, 85, & 15  
Owner: Brown Conti Co LLC  
Applicant: Brown Conti Co LLC  
Representative: Milestone Design Group; Dinsmore & Shohl  
LLP  
Jurisdiction: Louisville Metro  
Council District: 9-Bill Hollander  
Case Manager: **Julia Williams, RLA, AICP, Planning  
Supervisor**

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:**

01:00:30 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

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

Cliff Ashburner, Dinsmore and Shohl, 101 South Fifth Street, Suite 2500, Louisville, Ky. 40202  
Scott Kremer, 3258 Ruckriegel Parkway, Louisville, Ky. 40299

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

01:00:13 Mr. Ashburner gave a power point presentation. The site is a challenge. There is no alley access and drainage is also an issue.

01:22:30 Mr. Kremer continued the power point presentation. It's a fall away piece of property (to west) and is 2-stories at street level.

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

John Schardein, 209 Blankenbaker Lane, Louisville, Ky. 40202  
Phil Samuel, 3 Angora Court, Louisville, Ky. 40206  
Marybeth Orton, 135 North Bellare Avenue, Louisville, Ky. 40206

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

01:33:39 Mr. Schardein is an attorney representing his daughter who lives in one of the buildings but was not notified.

Mr. Schardein objects to the 5 foot variance and is concerned about the drainage. The proposal will probably require a very large detention basin, but will depend on MSD to handle it.

01:35:48 Mr. Samuel stated drainage is a recurring problem. The national standard for considering drainage is out of date.

If approved, Mr. Samuel requests a binding element to clean the retention basin periodically (once a year).

01:41:53 Ms. Orton is concerned about the drainage, some elderly neighbors and the density of the proposal.

**Additional Agency Testimony:**

Tony Kelly, MSD, 700 West Liberty Street, Louisville, Ky. 40202

01:44:15 Mr. Kelly stated the maintenance of the underground basin is the responsibility of the owner of the property. "Since the rear yard is in a MSD easement, we have elected that they install a pipe underground that goes all the way back to a catch basin, so that it's a contained system. As it's shown, they've conceptually sized it for just the pre-developed flow rate, but they'll have to take a look at that system they're directly tying into and may have to provide additional volume in that basin. We won't know that until we get to construction."

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

Mike O'Leary, 1963 Panyne Street, Louisville, Ky. 40206

**Summary of testimony of those neither for nor against:**

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01:30:37 Mr. O’Leary stated that his main concern is drainage. A heavy rain event will cause a lot of damage because the property slopes downward. MSD is aware of the situation.

**Rebuttal:**

01:46:46 Mr. Ashburner stated he tried to rectify the notification with the Schardein’s by providing notes of the neighborhood meetings and meeting them on site for discussion. The variance is not for the building to be 5 feet within the property line. The request is for a landscape buffer area. Also, conceptually the underground basin will work. It will be piped and probably be better than it is now.

**Deliberation**

01:53:53 Commissioner Howard stated the proposal has a unique design and the use is appropriate. Commissioner Carlson said there’s no fire resistance in the walls now, but the new building will have. That’s a nice improvement.

The commissioners agree the plan is in compliance and agree with the variance and waiver.

**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 and R-5B to R-6**

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

**WHEREAS**, The site is located in the Traditional Neighborhood Form District. The Traditional Neighborhood Form District is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings; and

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**WHEREAS**, Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are fifty to one hundred twenty years old, it is hoped that the Traditional Neighborhood Form will be revitalized under the new Comprehensive Plan. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) the preservation of the existing grid pattern of streets and alleys, (c) preservation of public open spaces; and

**WHEREAS**, The proposal is to consolidate the lots to form a large multi-family lot which is not consistent with the established pattern of lots along the block face; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the public realm of the site is maintained. The high density proposal is providing more open place than what is required per the LDC. The proposal is for residential infill. The Clifton Neighborhood plan called for the site to be downzoned to more accurately reflect the existing density at the time of rezoning. There are underutilized rear lots that were not associated with the main two family lots are being incorporated into the overall development. There is existing mixed density in the area. The site is located in the vicinity of a retail corridor (Frankfort Avenue) where existing sidewalks and transit is available. The area is mainly 1 to 2 story residential structures. The proposed structure is two stories at street level but 3 stories to the rear due to the topography of the site. The buildings fall within the setbacks of the two closest residential structures. Building materials will be similar to those found in the area. The Clifton ARC will determine if the proposal meeting their guidelines.

The proposal introduces a new density to Vernon Avenue. Setbacks adjacent to existing residential home lots are in compliance with the LDC. The screening within the buffers will be met; and

**WHEREAS**, the Louisville Metro Planning Commission further finds all other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 16ZONE1008, a change in zoning from R-4 and R-5B to R-6 based on the staff report and testimony heard today.

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**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Variance**

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

**WHEREAS**, The requested variance will not adversely affect public health safety or welfare since more than the required open space is being provided on the site. Buffers will screen the site along the property lines; and

**WHEREAS**, The requested variance will not alter the essential character of the general vicinity since the site is still providing an open private yard space for the site; and

**WHEREAS**, The requested variance will not cause a hazard or nuisance to the public since the variance requested reduces a private yard the public will not be affected; and

**WHEREAS**, The requested variance will not allow an unreasonable circumvention of zoning regulations since the variance requested reduces a private yard where open space overall on the site is more than the minimum; and

**WHEREAS**, The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since most of the lots in the area are served by an alley where the accessory structure/parking area is located and accessed off that existing alley. This is not the case for the development site. An alley doesn't serve the rear of the site; 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 since the overall open space required on the site is more than the minimum, there is no alley access to the parking which makes the driveway have to come from Vernon Ave. Using grass pavers for the driveway lessens the impact of having vehicles through the site; and

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**WHEREAS**, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

**Waiver**

**WHEREAS**, The waiver will not adversely affect adjacent property owners since the screening requirements within the buffers will still be met; and

**WHEREAS**, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The screening requirements within the buffers will still be met on the site while the tree requirements will be placed elsewhere on the site; 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 since one of the buildings is existing and the proposed structure is meeting the setback so that a grass paved drive lane to the rear parking can be made on the site

**WHEREAS**, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the building meets the required setback and the screening requirements will still be met in the buffer.

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**CASE NO. 16ZONE1008**

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1008, the variance from chapter 5.4.1.D.2 and the waiver from chapter 10.2.4 for the subject site based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**District Development Plan and Binding Elements**

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

**WHEREAS**, There do not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. The historic resource on the site is a contributing structure in the Clifton Preservation District, however that structure is proposed to be demolished due to the uninhabitable condition of the structure; and

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

**WHEREAS**, Open space requirements are being provided on the site in excess of the minimum; 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 overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Parking lots will meet all required setbacks; and



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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1008, the District Development Plan and binding elements on page 16 of the staff report based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

**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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. 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.
  - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of

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

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  
5. 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.
  
6. 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.
  
7. The materials and design of proposed structures shall be substantially the same as approved by the Clifton Architectural Review Committee.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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**PUBLIC HEARING**

**CASE NO. 17MISC1001**

**Request:** Bond Forfeiture  
**Staff Case Manager:** Paul Whitty, Legal Counsel

**Discussion:**

02:00:47 Ms. Liu stated this case is a subdivision bond forfeit. There's no information available today so this case will be placed on the February 16, 2017 Planning Commission Business Session.

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**PUBLIC HEARING**

**CASE NO. 16ZONE1048**

Case No: 16ZONE1048  
Request: R-4 to R-5A with waiver  
Project Name: Avalon Springs, Phase II  
Location: 7506 Beulah Church Road  
Owner: St. James Crossing, LLC  
Applicant: St. James Crossing, LLC  
Representative: Land Design and Development; Bardenwerper Talbott & Roberts, PLLC  
Jurisdiction: Louisville Metro  
Council District: 23-Peden  
Case Manager: **Brian Mabry, AICP, Planning Supervisor**

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:**

02:03:04 Mr. Mabry discussed the case summary, standard of review and staff analysis from the staff report.

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

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, 2<sup>nd</sup> floor, Louisville, Ky. 40223  
Kevin Young, Land Design and Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222  
David Steff, 7812 Applevue Lane, Louisville, Ky. 40228

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

02:16:00 Mr. Bardenwerper gave a power point presentation. Appletree Way and Applevue Ln. will be connected. Notification extended beyond 2 tiers.

02:24:39 Mr. Young stated this proposal is phase 2 on 8 acres, in which 5.9 will remain open space. A significant amount is wetlands and requires permitting from the

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Corps of Engineers. The storm water goes to an existing basin down to the stream. "We will continue with open discussion and maybe come up with a better solution."

02:32:56 Mr. Steff, President of Apple Valley Homeowners' Association, and they are in favor of the proposal. The connection of the dead-end streets will help tremendously with garbage trucks, snow plow trucks and emergency vehicles. The proposed buildings will be high quality.

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

Michael Boyer, 7621 East Manslick Road, Louisville, Ky. 40228

**Summary of testimony of those neither for nor against:**

02:35:08 Mr. Boyer stated he's concerned about drainage running off the proposed site and into the back of his property. "Since they have started their construction on phase 1, I have noticed a marked increase."

Mr. Boyer gave power point presentation, mainly of pictures after heavy rainfall. The dialogue with the applicant and MSD will be kept open. "I do not want to lose the back 200+ feet of my property into swamp or marsh land."

**Rebuttal:**

02:38:43 Mr. Young stated the blueline stream has 100-year flood plain associated with it. The detention basin will be enlarged. If a better solution comes along, it will be considered.

02:41:40 Mr. Kelly, MSD, stated it's a blueline intermittent stream, a natural well-defined channel. "They'll have to analyze the pre-development flow rate so once they actually get into construction, they may have to have some additional volume beyond a typical detention basin."

Mr. Bardenwerper said the finding of facts are in the booklets.

**Deliberation:**

02:46:00 The commissioners are in agreement that the zoning change is appropriate, water management will continue to be looked at and the connectivity for accessibility will be a nice enhancement.

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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 R-5A**

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

**INTRODUCTORY STATEMENT**

**WHEREAS**, this is an application for a 44-unit, 6-building addition to the existing/under construction apartment community by the same developer that built the apartments in Phase I of Avalon Springs; it is located south of The Fountains condominiums and Ashton Park apartments; the already existing/under construction Avalon Springs townhome buildings and those proposed in this case will be nearly identical; the PowerPoint presentation shown at the Planning Commission Public Hearing, along with the site plan, accompanying this application evidences and explains all that; the R-5A zoning and development plan accompanying same are compatible with the referenced form of development that has occurred already in the immediate vicinity; as said, there already exist The Fountains and Ashton Park multi-family communities immediately to the north; Beulah Church Road leads to and from the Snyder Freeway, thus this area is a good location, fronting as this site does on a minor arterial or major collector level roadway, which takes traffic to and from places of employment and places of retail shopping along the Outer Loop and such places of worship as the large Highview Baptist Church not far north of this site; and

**GUIDELINE 1: COMMUNITY FORM**

**WHEREAS**, the Community Form that this property is located in is the Suburban Neighborhood Form District, which is characterized by predominantly residential uses that vary from low to high density and that blend compatibility into the existing landscape and neighborhood areas; these proposed apartment buildings, as noted above, adjoin multi-family zoning and uses to the north and also single-family uses to the west where significant open space setbacks are provided; the proposed apartment building addition is compatible in terms of layout, design and density/intensity to adjoining and nearby uses; because the Suburban Neighborhood Form recommends diverse housing types, this application accomplishes that, as an addition to an attractively designed, high-end apartment community that this same developer recently built; and this is proposed as a medium density use, not a high density one, which would in and of itself probably be appropriate, given its location on an arterial or major collector roadway such as Beulah Church Road which is in close proximity to areas of shopping, worship, schools, etc.; and

**WHEREAS**, in conformance with this Guideline of the Comprehensive Plan, the private,

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disconnected access road throughout this apartment community as shown on the development plan is appropriate to this form and location; and

**GUIDELINE 2: CENTERS**

**WHEREAS**, the Intents and applicable Policies 1, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 of this Guideline all pertain to the notion of “centers”, which is a Comprehensive Plan concept which encourages mixed land uses organized around compact activity centers that are existing, proposed or planned in order to promote efficient uses of land, lower utility costs, reduce commuting time and transportation related air pollution, provide an opportunity for a mixture of residential development and housing types, and add to and encourage vitality and a sense of place in neighborhoods; within Suburban Neighborhood Form Districts, activity centers should be located at street intersections with at least one of the intersecting streets classified as collector or above; Beulah Church Road is a minor arterial/major collector; the entrance to this proposed apartment community will not lead to the Apple Valley subdivision, given that this is a private development adjoining other multifamily communities; the location of this medium density/intensity multi-family residential use, moving from this site on the south through The Fountains condominium community and Ashton Park to the apartment community on the north, means that overall these multi-family communities take on the character of a small Neighborhood Center at this location; and

**WHEREAS**, Policies 4 and 5 encourage compact and mixed uses, which this proposal ensures, by virtue of location and site design; Guidelines 6 and 7 encourage a mixture of residential and commercial uses, proximate one as to the other, and that is what is shown on the aerial photographs shown at the Planning Commission Public Hearing of Beulah Church Road from this site north to the commercial uses at the Outer Loop; and

**WHEREAS**, Policies 11, 13, 14 and 15 recommend that centers be designed taking into account the development patterns and designs of nearby development projects and also assure well screened and shared parking, well identified safe access, as well as use of existing utilities when possible; and all of that occurs in this particular case, again as evident on the development plan accompanying this application and on the aerial photographs on which this development plan is superimposed; and

**GUIDELINE 3: COMPATIBILITY**

**WHEREAS**, the Intents and applicable Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 28 and 29 of this Guideline all pertain to the issues of how to ensure that land uses and transportation facilities are located, designed and constructed so as to be compatible with nearby land uses and to minimize impacts to residential areas, schools and other sensitive features; and

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**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because, as said above, the design of this proposed apartment community takes into account what adjoins it (i.e., apartments to the north and single family homes across a significant open space to the west); in this case, brick building materials similar to those used in the existing multi-family communities and nearby homes will be utilized on all structures, which is already evident in immediate adjoining multi-family and single family neighborhoods; buildings will be two-story, townhome style and design; odors, traffic, noise and commercial type lighting will not be involved in these developments, such that those kinds of impacts will not exist; lighting will be residential in style and design; visually speaking, the proposed apartment addition will be compatible with those adjoining it and typical of the area; again, this is not high density zoning, but it is a type not at all that different than standard R-4 single-family housing, given the townhome style and design of these apartment buildings; and as evident on the development plan accompanying this application, good transitions, appropriate setbacks, landscape buffers, building heights that do not require variances, suitable LDC compliant signage are all involved in this application and again, evident on the development plan; and

**GUIDELINES 4 AND 13: OPEN SPACE AND LANDSCAPE CHARACTER**

**WHEREAS**, the Intents and applicable Policies 1, 3, 6 and 7 of this Guideline 4 and Policies 1, 2 and 5 of Guideline 13 all pertain to the idea of ensuring well designed, permanently protected open spaces within communities, as well as landscape throughout these communities that protect and enhance the natural environment; and

**WHEREAS**, this application complies with these Intents and applicable Policies of this Guideline because green space and open areas are included within the additional section of the existing Avalon Park apartment community; and there will be abundant trees appropriately located to provide for internal aesthetics, screening and buffering, as well as landscaping to satisfy all of the requirements pertaining the LDC; and

**GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY**

**WHEREAS**, the Intents and applicable Policies 1, 3, 5 and 6 of this Guideline all pertain to the provision of a positive culture for attracting and sustaining a variety of land uses, in this case residential; and

**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because this is an infill development, meaning that it adjoins to the north other existing like-kind development for which there is a significant market demand; and

**GUIDELINES 7, 8 AND 9: CIRCULATION, TRANSPORTATION FACILITIES, AND BICYCLE, PEDESTRIAN AND TRANSIT ACCESS**

**WHEREAS**, the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 13, 14, 15 and 16 of



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Guideline 7, plus Policies 7, 8, 9, 10 and 11 of Guideline 8, plus Policies 1, 2, 3, 4 and 5 of Guideline 9 all pertain to the issues of traffic impacts, access to and circulation through proposed developments and the provision of access by other means of transportation than simply the automobile; as this is a medium density multi-family development along a road that has adequate traffic-carrying capacity, development of this site as an addition to an existing multi-family community of this type is appropriate; Metro Transportation Planning reviewed the development plan filed with this application prior to docketing for the LD&T Committee meeting and before Planning Commission public hearing, and Metro Public Works and Transportation Planning agencies have determined that the existing external road system has adequate traffic-carrying capacity and that access to and, as shown on the development plan, through the site is appropriate; and sidewalks will be provided along Beulah Church Road and internally and bicycle accommodations will be made within the multi-family development; and

**GUIDELINES 10 AND 11: FLOODING AND STORMWATER PLUS WATER QUALITY**

**WHEREAS**, the Intents and applicable Policies 1, 3, 6, 7, 10 and 11 of Guideline 10 and Policies 3, 5 and 8 of Guideline 11 pertain to the issues of effectively managing stormwater and preventing the degradation of water quality due to water pollution and soil erosion and sedimentation; and

**WHEREAS**, this application complies with the Intents and applicable Policies of these Guidelines because MSD has provided regulations that pertain to soil erosion and sedimentation control, which is a construction detail that will be required of this applicant in connection with its developments of these multi-family and single-family communities; among other things, postdevelopment rates of runoff may not exceed pre-development conditions, and they will not do so in this case; ordinarily that is accomplished through on-site detention as here; and MSD's new water quality guidelines will also be accommodated through the design of one or several of multiple measures that are now available to assure best management practices in this regard; and

**GUIDELINE 12: AIR QUALITY**

**WHEREAS**, the Intents and applicable Policies 1, 2, 4, 6, 8 and 9 this Guideline all pertain to the issues of assuring no adverse consequences on air quality and, when possible, even taking measures to improve same; and

**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because, generally speaking, filling in the infill, so to speak (which means building next to development that already exists, whenever possible, as opposed to in outlying areas), is important as a means to assure reduced vehicle miles traveled; and this tends to help with air quality because people driving from their homes to places of work, to shopping, to places of

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worship, to school and so forth will be more proximately located relative to same and that is the case here; and

**GUIDELINE 14: INFRASTRUCTURE**

**WHEREAS**, the Intents and applicable Policies 2, 3, 4, 6 and 7 of this Guideline all pertain to assuring adequate infrastructure to support a new development project; and

**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because this site was chosen because it has sanitary sewer service available; also, water and electric service are available at the site without the need for lengthy extensions; it is always more cost-effective for the developer and better for public utilities when existing utility infrastructure can be utilized; and, as said, Beulah Church Road has adequate traffic-carrying capacity for limited amounts of added, especially residential, development where infill sites like this exist; and

**WHEREAS**, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books and on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 16ZONE1048, a change in zoning from R-4 to R-5A and the Alternative Connection Plan as shown on the Revised Detailed District Development Plan presented today based on the staff report, testimony heard today and the applicant's finding of facts.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Waiver**

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

Waiver of Section 10.2.4 to waive a portion the 25 ft LBA along the property lines adjoining The Fountains community.

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**WHEREAS**, the waiver will not adversely affect adjacent property owners because a 25 ft LBA shared between the adjoining Fountains residential condominium community and this proposed residential community will exist, just not the larger LBA required as if the adjoining Fountains residential condominium community were a use consistent with its commercial zoning; it is that commercial zoning that results in the need for a greater LBA on this property; and the commercial zoning dates way back in time and was never needed or utilized considering the ultimate development of that property as a multi-family use; and

**WHEREAS**, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with this application and considering the findings of fact adopted in this case and previous phases of this development and in the original Fountains rezoning; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it accommodates a decent shared LBA between this and the adjoining property, keeping the proposed new development as far away as possible from single family properties to the north and west and out of areas protected as open space; and

**WHEREAS**, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would be forced to provide an LBA wider than necessary given the two adjoining compatible uses and given the need to protect the open space to the south and west and provide significant separation between this proposed development and the single family properties to the north and west.

**Development Plan and Binding Elements**

**WHEREAS**, The proposal generally avoids the delineated wetlands on-site. The proposal will not preserve tree canopy by proposing to remove the existing four percent tree canopy, but it will add a substantial amount of new tree canopy by replacing it with the required 20 percent canopy; and

**WHEREAS**, Provisions for safe vehicular and pedestrian transportation within and around the development and the community has been provided. Efficiency of the overall street network is compromised by not completely connecting to adjacent stub streets; and

**WHEREAS**, The open space requirements are being exceeded on-site. In addition, required recreational space is provided; and

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**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 overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to the Comprehensive Plan to the extent described in the Staff Analysis for Rezoning above and to applicable requirements of the Land Development Code

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1048, a waiver of the Land Development Code section 10.2.4 to reduce to 10 feet the 25 foot landscape buffer area required along the north property line and the Revised Detailed District Development Plan and revised binding elements shown on page 19 of the staff report, with the exception of binding element 3d to remain as written based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

**Binding Elements**

1. The development shall be in accordance with the approved revised 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. 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.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The revised development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
4. 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.
  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. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
    - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
    - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of

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WPAs, TPAs) and other issues required by these binding elements / conditions of approval.

- c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 2, 2017 Planning Commission meeting.
8. A 6 ft. high solid wood shadow box fence shall be provided along the north property line between the multi-family portion of the Ashton Park 2 project adjoining the Fountains Condominiums. This new fence shall tie into the existing Fountains Condominiums fence and shall be stained the same color as the existing fence.
9. The applicant shall install landscaping as shown on the proposed landscape plan presented at the February 2, 2017 public hearing.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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**CASE NO. 16ZONE1065**

**Request:** Zone change from C-1 Commercial to C-2 Commercial for expansion of existing restaurant  
**Project Name:** Roosters  
**Location:** 7405 and 7409 Preston Highway  
**Owner:** Robert Gauthier  
**Applicant:** Robert Gauthier  
**Representative:** Bardenwerper, Talbott and Roberts  
**Jurisdiction:** Louisville Metro  
**Council District:** 24 – Madonna Flood  
**Case Manager:** Beth Jones, 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:**

02:55:59 Ms. Jones discussed the case summary, standard of review and staff analysis from the staff report.

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

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2<sup>nd</sup> floor, Louisville, Ky. 40223  
Derek Triplett, Land Design and Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222

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

03:02:10 Mr. Bardenwerper gave a power point presentation. The barber shop will be converted into an office, one building will be used for storage but fully enclosed and there will be an outdoor patio with alcohol consumption

03:09:39 Mr. Triplett stated the existing area is all paved. The existing flooding issues will not be made worse by this development.

**Deliberation:**

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03:10:38 Planning Commission deliberation.

**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 C-1 to C-2**

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

**INTRODUCTION**

**WHEREAS**, this proposal is a very limited one—only for C-2 zoning for a small additional portion of the site (the remainder already zoned C-2) in order for an existing restaurant, BC Roosters Restaurant, to be able to have “alfresco dining”, meaning sale of food and alcoholic beverages in a patio area outdoors; the existing restaurant building will continue operations as normal; the new patio area will be an expansion of the existing restaurant business; this location along Preston Highway, where other commercial uses already exist and where the existing restaurant has long been located and operating, will allow continued growth of the business with minimal impacts; and

**GUIDELINE 1 – COMMUNITY FORM**

**WHEREAS**, the Suburban Marketplace Corridor is generally located along major roadways with well-defined beginning and ending points; although not a preferred form of development scheme, the Suburban Marketplace Corridor dominates many of the older major arterials of Metro Louisville, such as Preston Highway where this restaurant is already located and operating; with other Suburban Marketplace Corridors include Dixie Highway, portions of Bardstown Road, portions of Shelbyville Road and so forth; this restaurant does not propose to change anything about the existing Preston Highway Suburban Marketplace Corridor with the rezoning and additional patio area to the rear of the existing building and shielded from Preston Highway; it does not propose to increase the form district length in either direction; rather this site is located right along the heart of the Preston Highway Suburban Marketplace Corridor; it is not a change in use but rather a slightly expanded use, by adding a 2,600 square foot pole barn, a 2,000 square foot covered patio, and a small uncovered patio, to add outdoor seating and an area for sale of food and consumption of alcoholic beverages; the site provides accommodations for transit users, bicyclists, and pedestrians being located on Preston Highway; and

**GUIDELINE 2: CENTERS**

**WHEREAS**, the proposed rezoning complies with all of the applicable Intents and Policies 1, 2,



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3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, and 16 of Guideline 2 because Guideline 2 is designed to “encourage mixed land uses organized around compact activity centers that are existing, proposed or planned;” this proposal complies with this Guideline because, although a Suburban Marketplace Corridor, by definition, is not compact but rather is linear, nevertheless even a Suburban Marketplace Corridor conforms with the Centers Guideline because that is the nature of the Suburban Marketplace Corridor—you might say compact in its linear nature with beginning and end points, rather than the preferred new form of Centers which are less linear and more compact; this proposed rezoning will allow an expansion of the existing BC Roosters restaurant that already serves the surrounding area to accommodate growth rather than a new proposed restaurant in a new location, which would be less compact; and

WHEREAS, the applicable Policies of this Guideline (1, 2, 3, 4 and 5) all necessarily have to take into account conditions such as this one, a small expansion of the existing restaurant facility along a linear Suburban Marketplace Corridor; if this proposed restaurant was a brand-new one, starting from scratch on a currently residentially zoned property, rather than a site already zoned C-1, it would be forced to conform to an entirely different layout and design; as stated, new activity centers are expected to be compact, to contain focal points, utilize shared parking and so forth; but in a situation such as this, where what is at stake is an expansion of an existing use, as opposed to the continued use of a barbershop business on a portion of the area being rezoned, of an existing commercial structure and unutilized area at the rear of the building, the expectations necessarily have to be less; in this particular case, given the fact that the uses adjoining it are commercial uses (including the residentially zoned property used as a parking lot), and given the fact that this site has been a restaurant site for years, this rezoning request is simply intended to bring more life to this restaurant and allow continued expansion of the business, than might otherwise be the case; an outdoor patio area and outdoor dining will have no negative impacts on any nearby properties at this location, and this business expansion with the attraction of outdoor seating for the sale of food and consumption of alcoholic beverages, will hopefully help and continue to reinvigorate this particular site and this Suburban Marketplace Corridor activity center; and

**GUIDELINE 3: COMPATIBILITY**

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 21, 22, 23, 24, and 28 of Guideline 3 because this proposal for an outdoor patio, pole barn and outdoor seating at an unutilized portion of the current site and a portion of the site already used as a barber shop, to the rear of the existing restaurant business complies with this Guideline because, as stated, the restaurant use already exists and is simply an expansion thereof; the only thing that is involved in this application is a proposal for outdoor area and use of the existing barber shop building where food and beverage can be served, in order to help ensure a successful restaurant at this location and expansion thereof to meet demand; this particular restaurant, B. C. Roosters, has been operating for some time and is very popular in this particular area of town, which will allow outdoor seating and service of alcohol that is increasingly popular in many areas of Metro Louisville and is anticipated to be at this location as well; and

WHEREAS, the applicable Policies of this Guideline (1, 2, 3, 5, 6, 7, 8, 9, 21, 22, 23 and 28) all suggest ways to mitigate the potentially adverse impacts of a nonresidential use on nearby

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residential properties; this proposal for outdoor seating and sale of food and consumption of alcoholic beverages at an existing restaurant site complies with all of these Policies of this Guideline because there are no residential uses that really might be adversely impacted. The adjoining property is already zoned C-1 and the residentially zoned property is a parking lot for this center with a conditional use permit to allow same; a restaurant with a sizable amount of parking has been located at this location for years; the idea of outdoor patio, pole barn, and seating for the sale of food and the consumption of alcoholic beverages is simply to help reinvigorate this commercial stretch of Suburban Marketplace Corridor and to allow the continued growth of this popular restaurant, as stated, currently operating at this location; further, provisions of the Land Development Code that relate to noise, lighting, signage, landscaping, screening and buffering must all be complied with, unless legitimate reasons are given for waivers therefrom; no waivers or variances are requested with this rezoning; those provisions of the Land Development Code are designed to mitigate the potentially adverse impacts addressed by many of these Policies of this Guideline; and

**GUIDELINES 4 AND 5 – OPEN SPACE AND NATURAL AREAS/SCENIC AND HISTORIC RESOURCES**

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 4, and 8 of Guideline 4 and Policies 1, 5, and 6 of Guideline 5 because given the location of this property along a busy arterial which serves as the main shopping corridor for this area of south central Metro Louisville, the issues of open space and natural/scenic and historic resources are not really pertinent to this property or this proposal; and

**GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY**

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, and 11 of Guideline 6 because this Guideline seeks to “reduce the public and private cost for land development” and to “ensure availability of necessary usable land to facilitate commercial .... development” in Metro Louisville; this proposal for an outdoor area and utilization of an existing barber shop business location at this restaurant site complies with this Guideline because it is intended to breathe new life into older commercial corridor and expansion of business to meet the demands of the current restaurant; and

**WHEREAS**, the applicable Policies of this Guideline (3, 5, 6 and 11) all pertain to investment in older commercial areas, redevelopment, location of activity centers along arterials and adaptive reuse; as explained, this BC Roosters Restaurant opened in the center and breathed new life therein, and this will allow the continued expansion thereof; if successful here, other B. C. Roosters Restaurants locations in other commercial strips, like this one, in Metro Louisville, may open breathing new life into older existing commercially zoned sites and corridors; and

**GUIDELINES 7, 8 AND 9 – CIRCULATION; TRANSPORTATION FACILITY DESIGN; AND BICYCLE, PEDESTRIAN AND TRANSIT**

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 16, and 19 of Guideline 7, Policies 1, 2, 5, 7, and 9 of Guideline 8

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and Policies 1, 2, 4, and 5 of Guideline 9 because these Guidelines are intended to “insure a balanced and comprehensive multi-modal transportation network that is coordinated with desired growth and development patterns and provides for the movement of people and goods [that insures] transportation facilities that are safe and efficient, that minimize adverse impacts upon the community and that accommodates, where possible, all modes of travel...; [and that] support[s] transit and non-motorized methods of travel”; this proposal for outdoor seating and consumption of alcoholic beverages complies with these Guidelines because the plan has been designed in accordance with requirements imposed by Metro Works and KTC; access from Preston Highway and internal circulation comply with the requirements of those agencies; the expansion of the current business also meets the intent and goals of these Guidelines as the site is already existing and easily accessible; and

**WHEREAS**, the applicable Policies (1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 16, and 19) of Guideline 7 all address specific design features that must be addressed on every development plan; this proposal for outdoor dining and consumption of alcoholic beverages complies with these Policies of this Guideline for reasons stated, which include the fact that Land Design and Development (LD&D) has laid out the site in consultation with Metro Works and KTC, utilizing design standards that are commonplace for restaurant uses along busy commercial corridors of this kind with appropriate mitigations measures taken; and

**WHEREAS**, applicable Policies (1, 2, 5, 7, and 9) of Guideline 8 and Applicable Policies (1, 2, 4, and 5) of Guideline 9 all address alternate means of transportation, such as bicycle, pedestrian or transit; this proposal complies with those Policies of this Guideline because, once again, sidewalks, bicycle accessibility and transit availability are all addressed on the plan as standard design elements; the expansion of the business will allow easier access than an alternate site not located along Preston Highway and easily accessible by transit, bicycle, and pedestrians; and

**GUIDELINES 10, 11 AND 12 – FLOODING AND STORMWATER; WATER QUALITY; AND AIR QUALITY**

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, and 12 of Guideline 10, Policies 1,3, 8, and 9 of Guideline 11 and Policies 1, 2, 3, 5, 6, and 8 of Guideline 12 because Guidelines 10, 11 and 12 requires development “minimize the potential for an impact of flooding and to effectively manage storm water; (2) protect water quality; (and to) minimize, reduce or eliminate ... air pollution ...”; this proposal for an expansion of the existing business and outdoor dining and consumption of alcoholic beverages in an existing restaurant site complies with these guidelines because it is a slightly more intense use of an already existing restaurant with existing parking; the area of the expansion is already impervious surface and won't increase the flooding or stormwater issues; consequently, nothing new is proposed on this property that would exacerbate any existing storm water conditions, contribute to the degradation of water quality or cause greater air pollution. In fact, the quite the contrary i.e., because to the extent that applicable agencies, such as MSD, require mitigation of existing stormwater problems, and once construction occurs, this proposal will be required to satisfy the requirements of MSD storm water management and soil erosion sedimentation control; also, to the extent that this is expansion of an existing site,

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reinvigorating commercial activity in the area should mitigate adverse impacts on air quality that might occur if this was a new restaurant at a new location; utilizing this site along this busy commercial corridor in close proximity to a large residential population will help minimize vehicle miles traveled between places where people live and places where they shop and dine; and

**WHEREAS**, applicable Policies (1, 2, 3, 5, 6, and 8) of Guideline 12 all suggest ways to protect air quality; this proposal complies with these Policies of this Guideline because it involves expanding an already existing restaurant site where transit exists, where sidewalks are or can be provided and where provisions for bicycle and transit are or can be assured; and

**GUIDELINE 13 – LANDSCAPE CHARACTER**

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5, and 6 of Guideline 13 because this Guideline is designed to “protect and enhance landscape character”; this proposal complies with this Guideline and all of the applicable Policies (1, 4, 5 and 6) of this Guideline because the new Land Development Code requires that new land use proposals comply with the various landscape regulations unless, because of the extent of change in the particular land use, all of the provisions thereof do not have to be complied with; no waivers have been requested; and

**WHEREAS**, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 16ZONE1065, a change in zoning from C-1 to C-2 Commercial based on the staff report, testimony heard today and the applicant’s finding of facts.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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

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

**WHEREAS**, The conservation of natural resources on the property proposed for development, including trees and other living vegetation, steep slopes, water courses,

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flood plains, soils, air quality, scenic views and historic sites. The site includes none of these natural resources; and

**WHEREAS**, The plan has been reviewed and approved by DPW; and

**WHEREAS**, The proposed development includes no open space requirements; and

**WHEREAS**, The proposal has been reviewed and approved by MSD; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the proposal is consistent with development on adjacent and nearby sites; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal has been fully reviewed and approved by Louisville Metro Planning and Design Services and the appropriate public agencies and public service providers.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1065, the Detailed District Development Plan and the binding elements on pages 11 and 12 of the staff report based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

**Binding Elements:**

1. The site shall be maintained in accordance with all applicable sections of the Land Development Code (LDC) and agreed-upon binding elements unless amended pursuant to the LDC. Changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or to its designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Notice of a request to amend these binding elements shall be provided in accordance with Planning Commission policies and procedures. The Planning Commission may require a public hearing on any such request.
3. The development shall not exceed 11,027 square feet.
4. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

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5. All signs shall be in accordance with LDC Chapter 8 sign regulations. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.
6. There shall be no outdoor music from any source, outdoor entertainment or outdoor PA system usage permitted on the site.
7. All lighting shall comply with the requirements of LDC 4.1.3.
8. The applicant, developer or property owner shall provide a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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Request:	Zone change from PEC to C-2
Project Name:	BMW of Louisville
Location:	2000 Blankenbaker Parkway
Owner:	TT of B Louisville Inc.
Applicant:	BMW of Louisville
Representative:	Bardenwerper, Talbott and Roberts, PLLC
Jurisdiction:	City of Jeffersontown
Council District:	20 – Stuart Benson
Staff Case Manager:	<b>Beth Jones, AICP, Planner II</b>

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:**

03:15:57 Ms. Jones discussed the case summary, standard of review and staff analysis from the staff report.

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

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Second Floor, Louisville, Ky. 40223  
John Addington, BTM Engineering, 3001 Taylor Springs Drive, Louisville, Ky. 40220

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

03:24:55 Mr. Bardenwerper gave a power point presentation. There will be a retaining wall on Blankenbaker along the rear of the site. It will be attractive with a fence on top.

03:28:58 Mr. Addington stated the retaining wall is shown on the development plan. There will be 2 access points.

**Deliberation:**

03:35:25 Planning Commission deliberation.

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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 PEC to C-2**

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

**INTRODUCTION**

**WHEREAS**, this rezoning involves an adjacent site to the already zoned site that is the subject of an RDDDP for the BMW of Louisville dealership that will be constructed on these combined sites; they adjoin the Lexus of Louisville dealership under ownership of an affiliated entity; this site together with the RDDDP site will be developed under a common scheme, although the proposed 71,231 sf BMW dealership building will be located on the adjoining larger site, whereas this one will be for automobile display parking; and

**GUIDELINE 1 – COMMUNITY FORM**

**WHEREAS**, the proposed automobile dealership on this site is appropriate because Suburban Workplaces “often contain a single large-scale use or a cluster of uses within a master plan development;” also, Suburban Workplace is a form characterized by predominantly industrial and office uses, meaning not entirely; and given that the Lexus and BMW dealerships are side by side, they represent a large-scale use, plus they are large employers requiring significant sized properties such as available at this location; and

**GUIDELINE 2: CENTERS**

**WHEREAS**, the proposed automobile dealership complies with all of the applicable Intents and Policies 2, 3, 4, 5, 7, 11, 13, 14 and 15 of Guideline 2 because this adjacent property to an already properly zoned site next to an already existing car dealership involves an efficient use of land similarly used next door and an investment in existing infrastructure; car buyers already visiting the Lexus dealership will have travel times and distances reduced when shopping for another similar brand next door; since this is an expansion of an already properly zoned site with an affiliated dealership located next door to an already existing car dealership, this rezoning does not involve an isolated commercial use expansion; the activity center established by the Lexus



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dealership and other commercial facilities nearby means this involves an expansion of same and not the creation of a new activity center; the addition of another automobile dealership enhances the mix of commercial uses already existing at this location; the new BMW dealership will be of a high-end design like the Lexus dealership; existing utilities will be utilized; and parking will be well screened and landscaped; and

**GUIDELINE 3: COMPATIBILITY**

**WHEREAS**, the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 4, 5, 6, 7, 8, 9, 20, 21, 22, 23, 24, 28 and 29 of Guideline 3 because the proposed new BMW automobile dealership next to the existing Lexus one is a compatible use in an area of large employment activities; the proposed dealership building on the already zoned adjacent site, as proposed, is highly attractive, just like the existing Lexus dealership building; high quality building materials are used; odors and air quality emissions, traffic, noise, lighting and visual impacts are addressed by virtue of this new dealership being part of a larger automobile dealership site, thus promoting the referenced impacts to be congregated at one high-traffic location, not adjacent to and thus adversely impacting residential uses; the accompanying DDDP and concept landscape plan on the colored-up site plan shown at the neighborhood meeting illustrate the appropriate setbacks with good screening and buffering; and lighting will be addressed in a binding element as requested in the neighborhood meeting; and

**GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY**

**WHEREAS**, the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2 and 6 of Guideline 6 because this site is one of very few that has significant available land at a high-traffic location to accommodate a new car dealership in an already existing activity center; and this reduces costs of land development and further promotes an existing employment center with good access to a support population that will visit this and the adjoining auto dealership; and

**GUIDELINES 7, 8 AND 9 – CIRCULATION; TRANSPORTATION FACILITY DESIGN; AND BICYCLE, PEDESTRIAN AND TRANSIT**

**WHEREAS**, the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 4, 10, 11, 13, 14, 15 and 18 of Guideline 7, Policies 1, 3, 5, 6, 7, 9, 10 and 11 of Guideline 8, and Policies 1, 2, 3 and 4 of Guideline 9 because Blankenbaker Parkway has adequate traffic-carrying capacity for business growth, and a car dealership generates less traffic than many retail users because of fewer large purchases as opposed to more smaller purchases – thus less customers than many retail uses of similar acreage; since roads systems are adequate,

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the issues to address, as addressed on the DDDP accompanying this application and on the related RDDDP, involve parking adequacy, alternative transportation modes, and whether internal traffic movements, internal parking arrangements and access from Blankenbaker Parkway as well as between adjoining sites are appropriately designed; the DDDP accompanying this application combined with the adjoining RDDDP satisfy all of the design requirements of Metro Public Works and Transportation planning which are inherent in all three of these Guidelines; and the DDDP received the preliminary stamp of approval from these agencies prior to public review; and

**GUIDELINES 10, 11 AND 12 – FLOODING AND STORMWATER; WATER QUALITY; AND AIR QUALITY**

**WHEREAS**, the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 3, 6, 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11 and Policies 1, 4, 7, 8 and 9 of Guideline 12 because MSD requires that post development peak rates of runoff do not exceed pre-development conditions and that adjacent properties are not adversely affected by the subject site's new and through drainage from storm water run-off; MSD's preliminary stamp of approval was obtained on the DDDP prior to public review; MSD has also established soil erosion and sediment control as well as water quality standards which must be met with this development's construction plans; and as to all of the Policies associated with air quality, they are always addressed when commuting times and distances are reduced when new activities congregate as here in an existing activity center; and

**GUIDELINE 13 – LANDSCAPE CHARACTER**

**WHEREAS**, the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5 and 7 of Guideline 13 because, as the concept landscape plan produced at the neighborhood meeting and accompanying this application demonstrate, and as will be included in the eventual landscape plan filed with DPDS post zoning approval, this site will comply with LDC landscape requirements; and

**WHEREAS**, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books and on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to the city of Jeffersontown, **APPROVAL** of Case No. 16ZONE1066, a change in zoning from PEC Planned Employment Center to C-2 Commercial District

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based on the staff report, testimony heard today and the applicant's finding of facts under tab 8 of the submitted booklet.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Waiver**

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

**Waiver of: Chapter 10.3.5.A.1 to omit the required 3 foot berm in the Parkway Buffer.**

**WHEREAS**, the waiver will not adversely affect adjacent property owners because the most affected property is the one that this same applicant already owns for its Lexus auto dealership; and

**WHEREAS**, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the PEC to C-2 rezoning application; and as respects the RDDDP portion of the overall site, landscaping in compliance with the LDC will be evident in abundance elsewhere on the site, just not proposed to obstruct the view of for-sale automobiles that need to be seen from the roadway; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because, as stated above, ample landscaping in compliance with the LDC will be evident elsewhere throughout the overall site; and

**WHEREAS**, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because for-sale vehicles would otherwise not be visible from the street, which would make it difficult to market and sell them.

**Development Plan and Binding Elements**

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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; These natural resources do not currently exist on the site; and

**WHEREAS**, The plan has been reviewed and approved by DPW; and

**WHEREAS**, The proposed development includes no open space requirements. With the exception of the parkway berm, for which a waiver is requested, the plan meets or exceeds all landscaping requirements; and

**WHEREAS**, The proposal has been reviewed and approved by MSD; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the proposal is consistent with development on adjacent and nearby sites; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal has been fully reviewed and approved by Louisville Metro Planning and Design Services and the appropriate public agencies and public service providers.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to the city of Jeffersontown, **APPROVAL** of Case No. 16ZONE1066, the Detailed District Development Plan, the proposed binding elements on pages 11 and 12 of the staff report and a waiver of the Land Development Code section 10.3.5.A.1 to omit the 3 foot berm required within a parkway buffer based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

**Binding Elements**

1. The site shall be maintained in accordance with all applicable sections of the Louisville Metro and the City of Jeffersontown Land Development Codes (LDC) and agreed-upon binding elements unless amended pursuant to the LDC.
2. Amendment of any binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any amendments not so referred shall not be valid.
3. Notice of a request to amend these binding elements shall be provided in accordance with Planning Commission policies and procedures. The Planning Commission may require a public hearing on any such request.

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4. Development on the site shall be consistent with the development plan presented at the Planning Commission public hearing on February 2, 2017.
5. Permanent signs on the site shall comply with all requirements of Louisville Metro and City of Jeffersontown Land Development Codes. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.
6. There shall be no outdoor music from any source, outdoor entertainment or outdoor PA system usage permitted on the site.
7. All lighting shall comply with the requirements of Louisville Metro LDC 4.1.3. and the City of Jeffersontown Land Development Code.
8. Construction fencing shall be erected at the edge of the area of development prior to any grading or construction to protect existing tree stands and their 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.
9. The applicant shall submit a plan for approval by the Planning Commission staff landscape architect showing trees/tree masses to be preserved prior to beginning any construction procedure including clearing, grading or demolition. Any modification of the tree preservation plan requested by the applicant may be approved by the Planning Commission staff landscape architect if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
  - a. proposed site plan showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features; LOJIC topographic information is acceptable.
  - b. preliminary drainage considerations, including retention/detention areas, ditches/large swales.
  - c. location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  - d. location of construction fencing for each tree/tree mass designated to be preserved.
10. Before any permit (including but not limited to building, parking lot, change of use or alteration) is requested:
  - a. the development plan must receive full construction approval from Louisville Metro Public Works and the Metropolitan Sewer District.

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- 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 and/or landscaping as required by the Louisville Metro and City of Jeffersontown LDCs. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. a minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
11. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner until a revised district development plan is approved or an extension is granted by the Planning Commission.
12. A certificate of occupancy must be received from the appropriate code enforcement office 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.
13. The applicant, developer or property owner shall provide a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**  
No report given.

**Site Inspection Committee**  
No report given.

**Planning Committee**  
No report given.

**Development Review Committee**  
No report given.

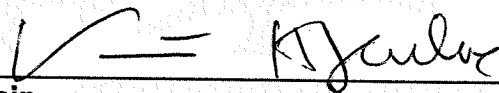
**Policy and Procedures Committee**  
No report given.

**CHAIRPERSON/DIRECTOR'S REPORT**

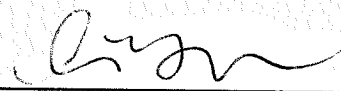
No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 4:46 p.m.

  
\_\_\_\_\_

**Chair**

  
\_\_\_\_\_

**Planning Director**

