

Docket No. 21-ZONE-0121

Proposed change in zoning from R-1 to C-2, Variance and Waivers to allow construction of a new hotel as an addition to the existing off-track betting and historic horse racing facility at Derby City Gaming, as well as a CUP for the horse training/boarding facility on property located at 4520 Poplar Level Road

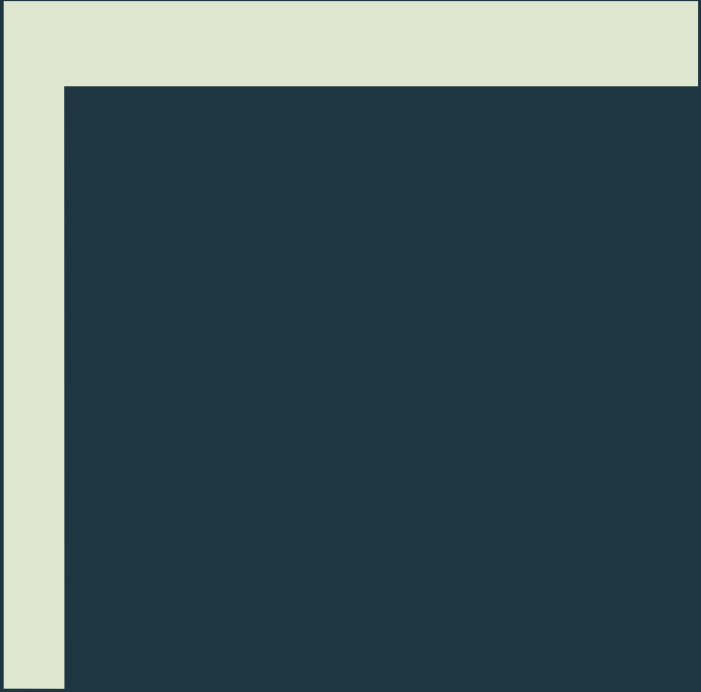


Attorneys: Bardenwerper Talbott & Roberts, PLLC

Land Planners, Landscape Architects & Engineers: Vision Engineering

# Index

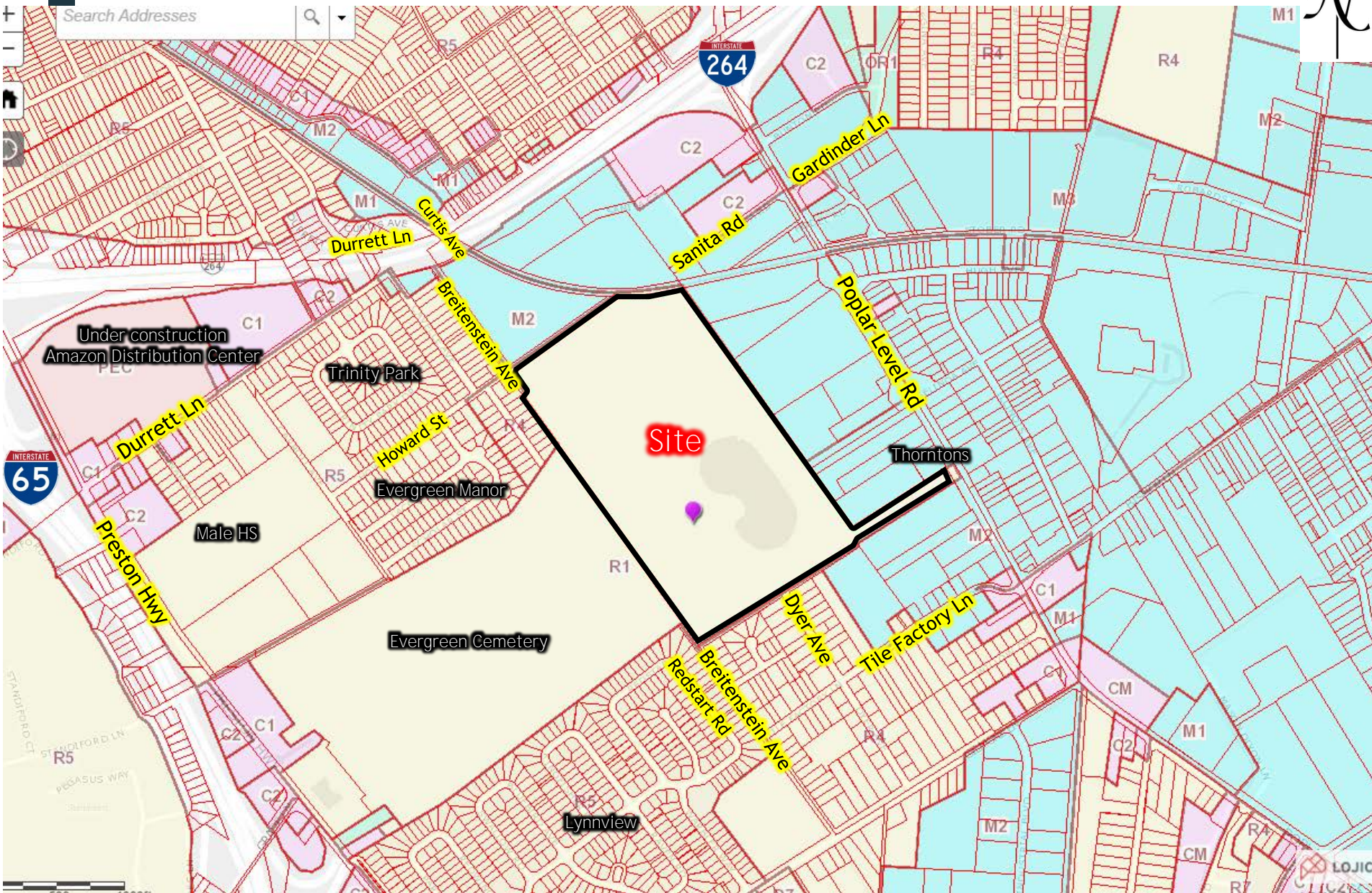
1. LOJIC Zoning Map
2. Aerial photographs of the site and surrounding area
3. Ground level photographs of the site and surrounding area
4. Neighborhood Meeting notice list map, letter to neighbors inviting them to the meeting and summary of meeting
5. Development Plan
6. Building elevations
7. Proposed additional binding elements
8. Traffic Study
9. Statement of Compliance filed with the original zone change application with all applicable Goals of the 2040 Plan, Variance and Waiver Justifications
10. Proposed findings of fact pertaining to compliance with the 2040 Plan, Variance and Waiver criteria

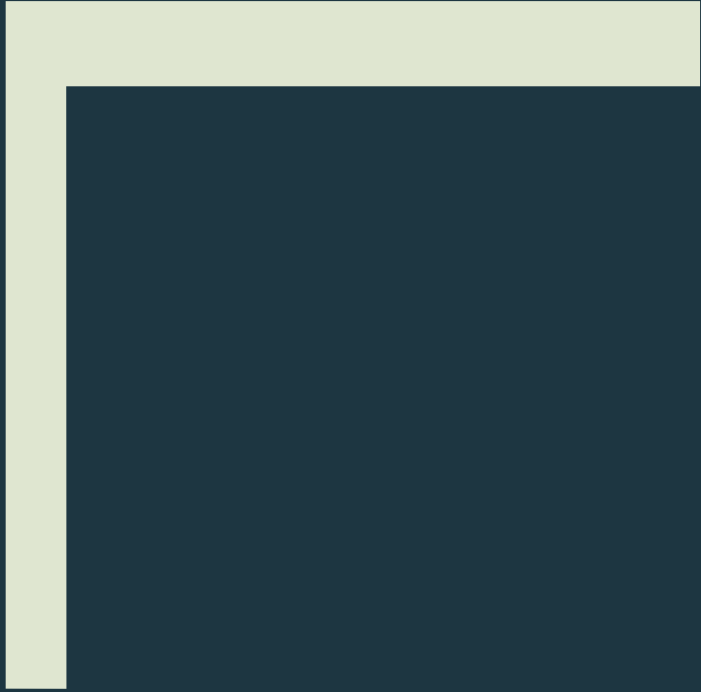


TAB 1  
LOJIC ZONING MAP



Search Addresses





TAB 2  
AERIAL PHOTOGRAPH  
OF THE SITE AND  
SURROUNDING AREA



Horse barns



Existing gaming facility

Site

Evergreen Cemetery

Male HS

Trinity Park

Evergreen Manor

Lynnview

Curtis Ave

Durrett Ln

Breitenstein Ave

Howard St

Sanita Rd

Poplar Level Rd

Breitenstein Ave

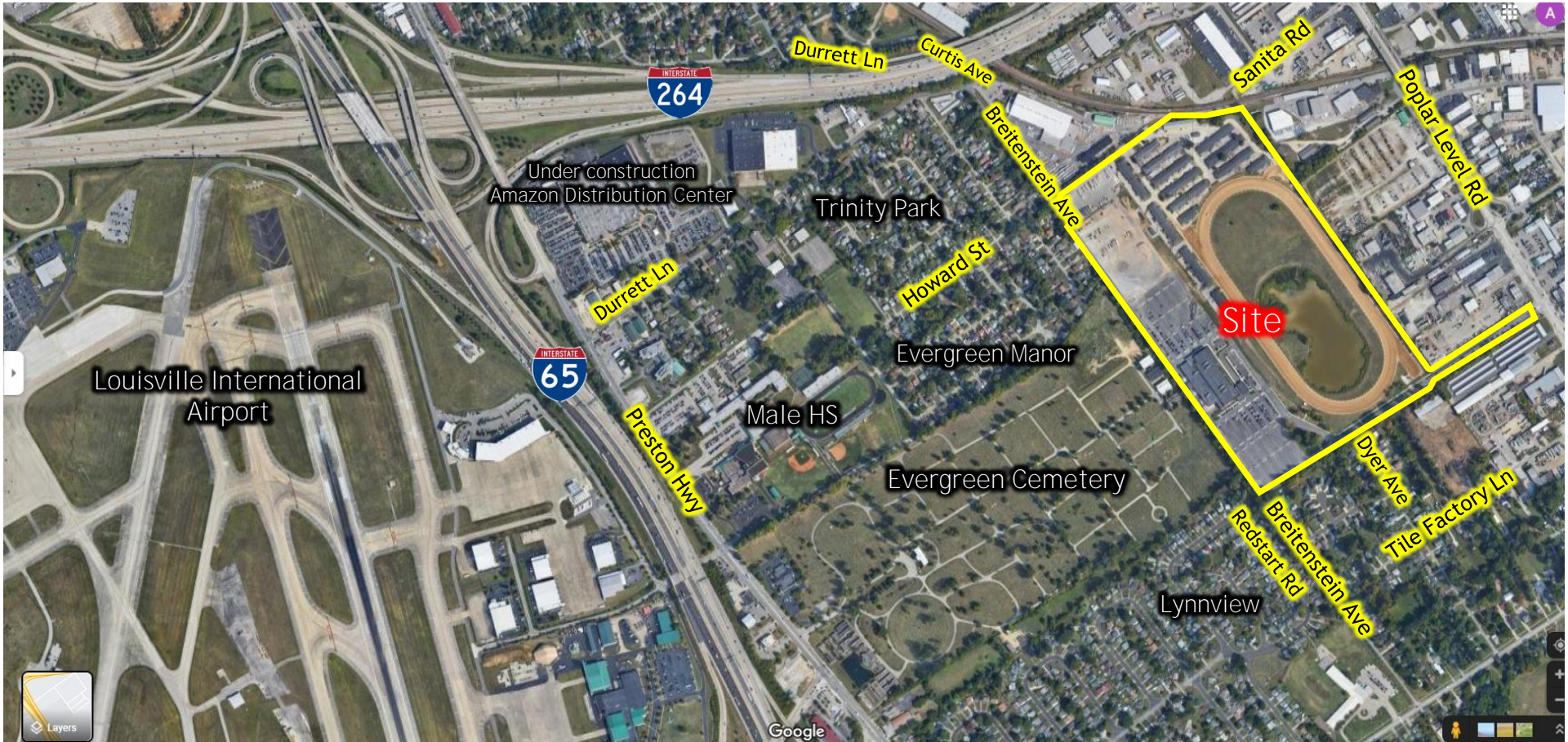
Dyer Ave

Tile Factory Ln

INTERSTATE 264







Louisville International  
Airport

Under construction  
Amazon Distribution Center

Trinity Park

Evergreen Manor

Male HS

Evergreen Cemetery

Lynnview

Site

Google



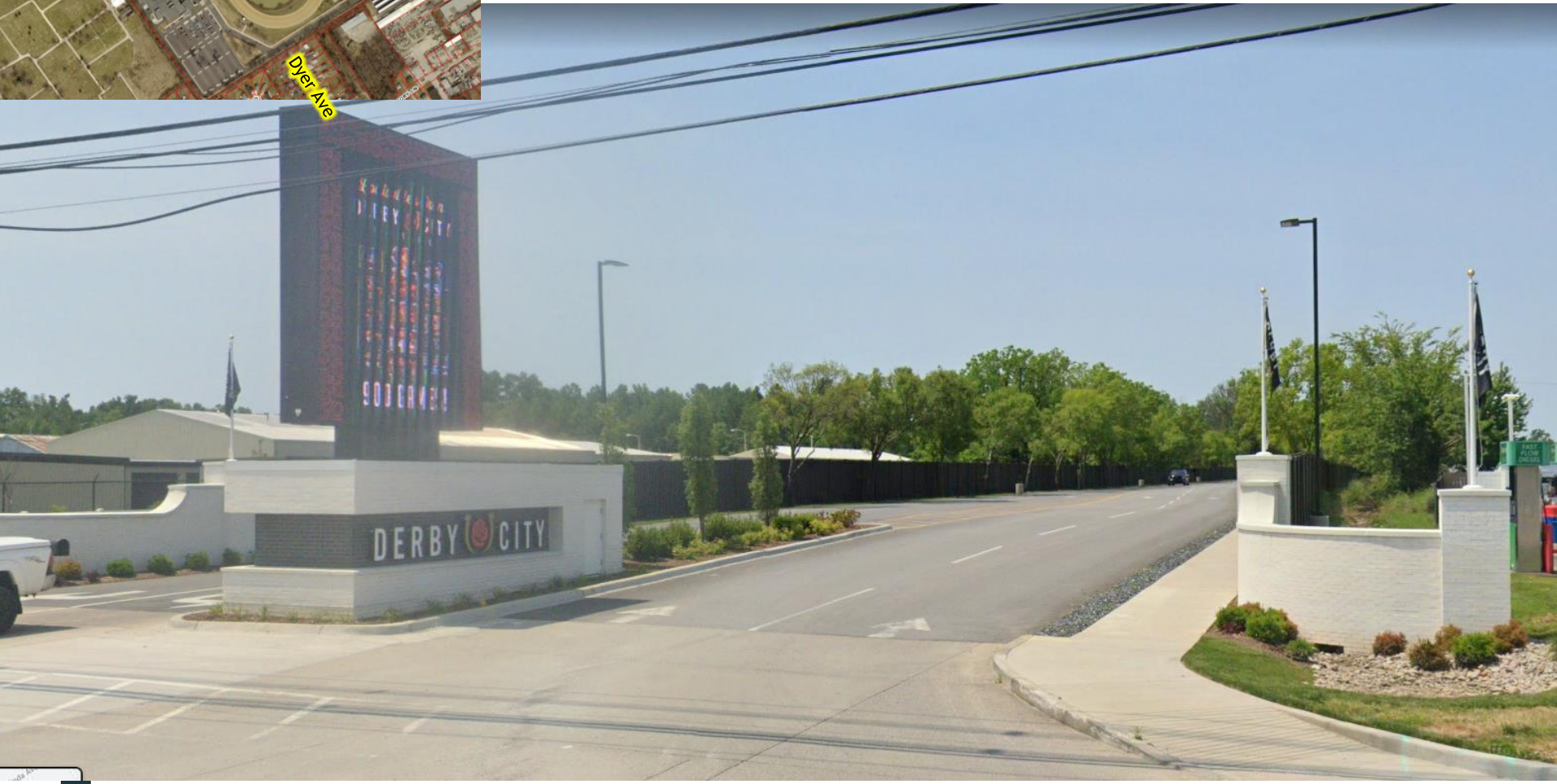


TAB 3  
GROUND LEVEL  
PHOTOGRAPHS OF THE  
SITE AND SURROUNDING  
AREA





Area of KTC approved traffic signal to be installed - Poplar Level Road at entrance



Poplar Level Road entrance





Derby City Gaming

Entrance road to the facility

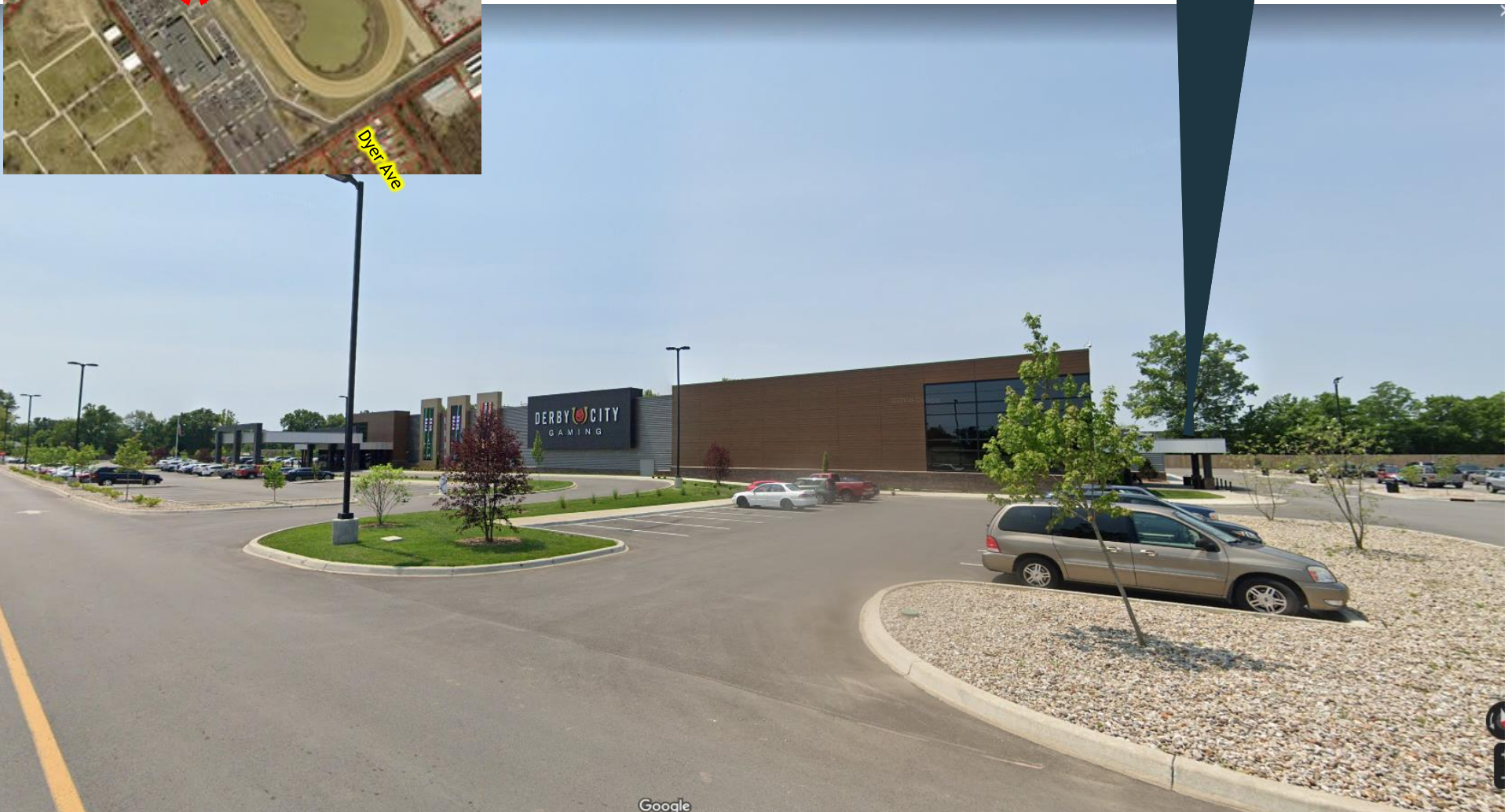


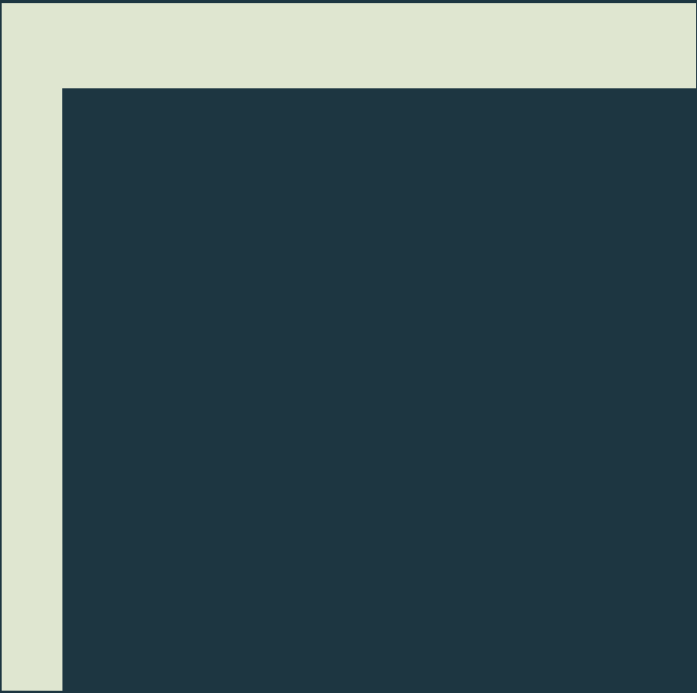


Existing Derby City Gaming facility



Area of proposed hotel





TAB 4  
NEIGHBORHOOD  
MEETING NOTICE LIST  
MAP, LETTER TO  
NEIGHBORS INVITING  
THEM TO THE MEETING  
AND SUMMARY OF  
MEETING





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William B. Bardenwerper  
Cell: (502) 419-7333  
Email: [WBB@BARDLAW.NET](mailto:WBB@BARDLAW.NET)

August 9, 2021

**RE: Proposed zone change from R-1 to C-2 for the current Derby City Gaming Facility located 4520 Poplar Level Road**

Dear Neighbor,

We are writing to invite you to a meeting we have scheduled to present neighbors with our zone change plan to allow the construction of a 45,000 sf hotel and gaming addition to the current Derby City Gaming facility.

Accordingly, we have filed a zone change plan for pre-application review with Metro Planning and Design Services (PDS) that has been assigned case number **21-ZONEPA-0097** and case manager, **Dante St. Germain**. We'd like to explain to you why we're pursuing this rezoning now when we've operated under nonconforming use (aka "grandfather") rights with a conditional use permit all these years and also want to show you our proposed development plan. We likewise want to hear what thoughts, issues and perhaps even concerns you may have.

In that regard, a meeting will be held on **Thursday, August 26<sup>th</sup> at 6:30 p.m.** at the **Derby City Gaming Trackside Building (former Track Kitchen)** located at **4520 Poplar Level Road, Louisville, Kentucky 40213.**

If you cannot attend the meeting but have questions in advance thereof, please call me at (502) 419-7333 or Nick Pregliasco at (502) 426-6688.

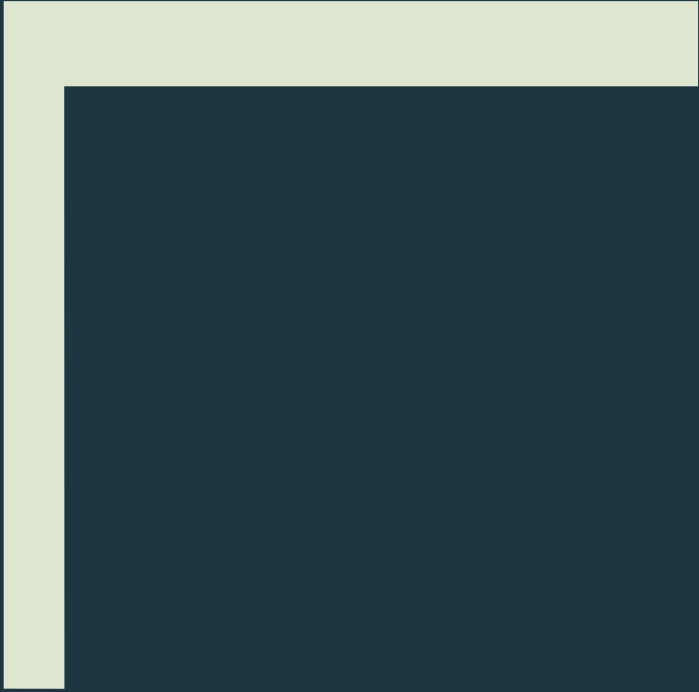
We look forward to seeing you soon. Many thanks.

Sincerely,



Bill Bardenwerper

c: Hon. Nicole George, Councilwoman, District 21  
Brian Davis, Planning Manager, Louisville Metro Planning & Design Services  
Dante St. Germain, Case Manager, Louisville Metro Planning & Design Services  
Ryan Jordan, Vice President of Operations, Churchill Downs, Inc., applicant  
Jihad Hallany, land planner, Vision Engineering  
Nick Pregliasco, partner, Bardenwerper Talbott & Roberts, PLLC

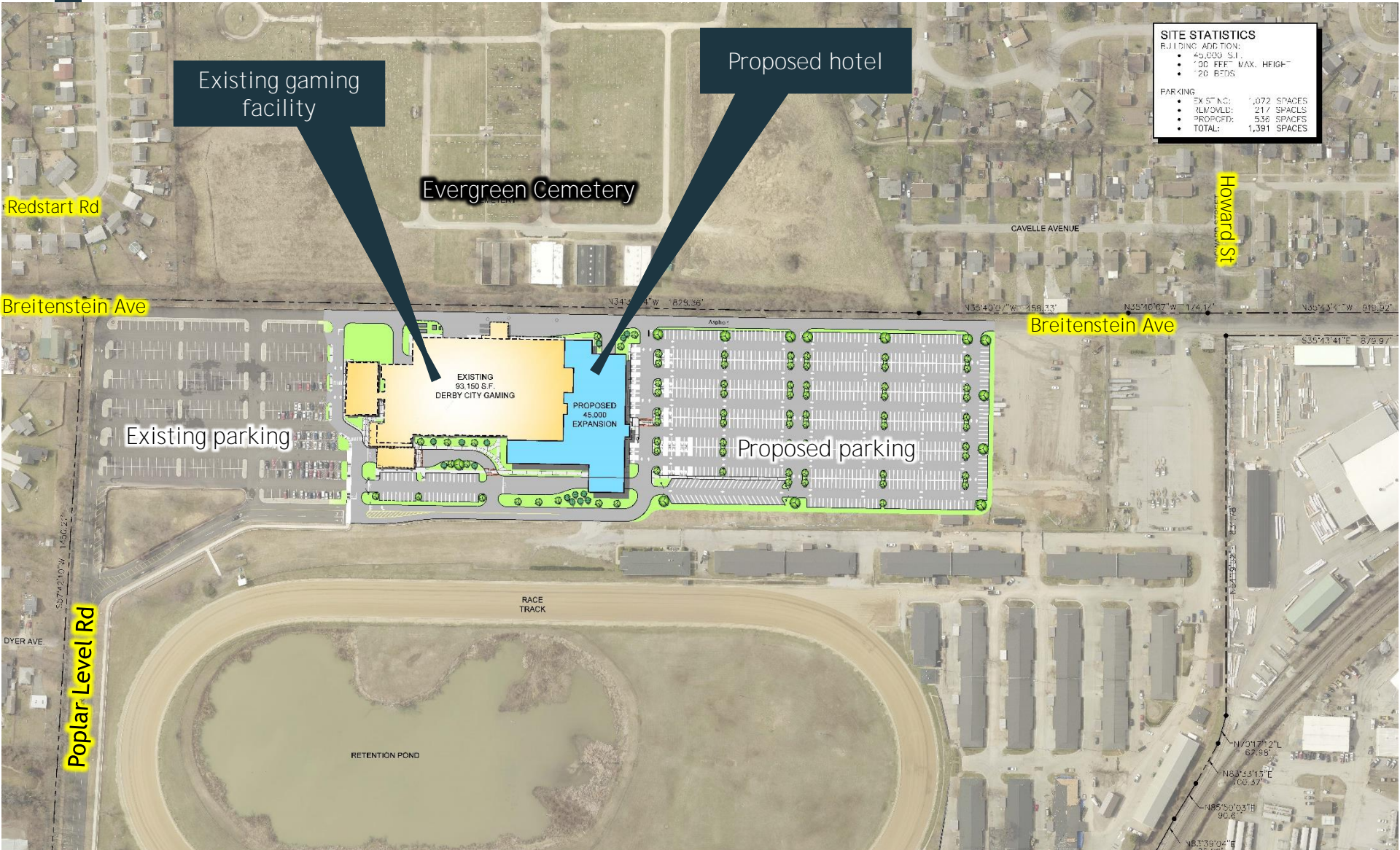


TAB 5  
DEVELOPMENT PLAN









Existing gaming facility

Proposed hotel

Evergreen Cemetery

SITE STATISTICS	
BUILDING ADDITION:	
• 49,000 S.F.	
• 100 FEET MAX. HEIGHT	
• 20 BEDS	
PARKING:	
• EXISTING:	1,072 SPACES
• XL/SHLDS:	217 SPACES
• PROPOSED:	536 SPACES
• TOTAL:	1,391 SPACES

Redstart Rd

Howard St

Breitenstein Ave

Breitenstein Ave

Existing parking

Proposed parking

EXISTING  
93,160 S.F.  
DERBY CITY GAMING

PROPOSED  
45,000  
EXPANSION

RACE TRACK

RETENTION POND

Poplar Level Rd

DYER AVE

63° 7' 42" W 1,430.27'

N34° 1' 4" W 1,679.36'

N32° 40' 7" W 1,588.53'

N35° 10' 07" W 1,741.14'

N35° 4' 14" W 916.92'

S35° 13' 41" E 879.97'

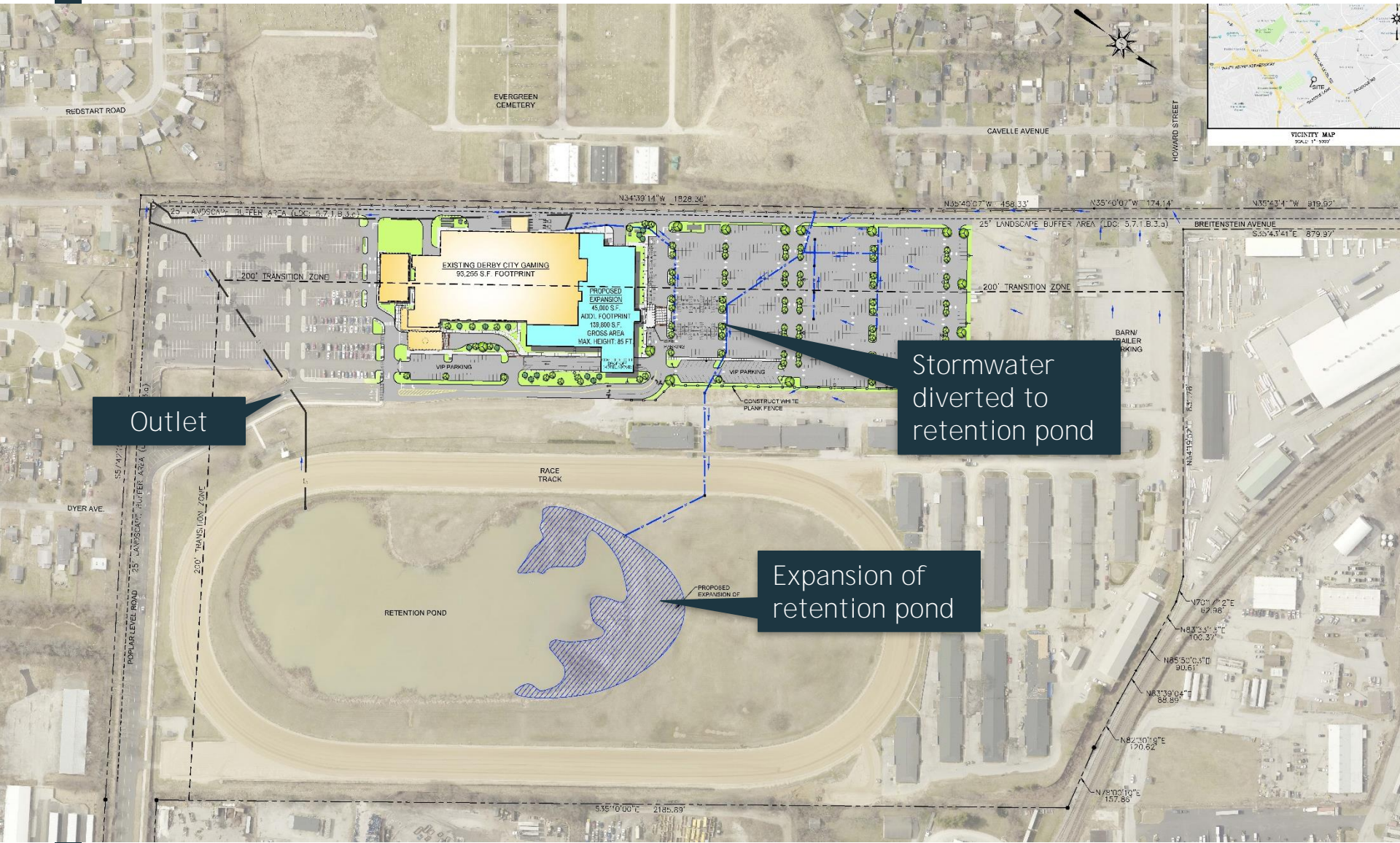
N7° 0' 17" E 679.98'

N83° 33' 13" E 106.57'

N85° 0' 33" E 90.6'

N83° 33' 04" E 90.6'



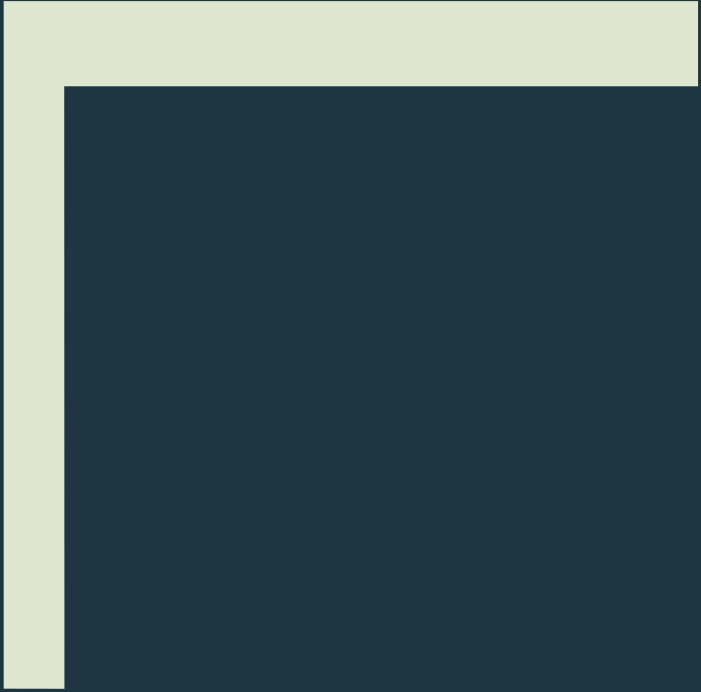


Outlet

Stormwater diverted to retention pond

Expansion of retention pond





TAB 6  
BUILDING ELEVATIONS



**DERBY CITY**  
GAMING



View from the north of new proposed hotel



CHURCHILL DOWNS  
INCORPORATED

DERBY CITY  
GAMING

R2A  
R2Architects

View from southeast of the existing gaming facility and new proposed hotel





  
CHURCHILL DOWNS  
INCORPORATED

DERBY CITY  
GAMING

  
R2Architects





  
CHURCHILL DOWNS  
INCORPORATED

DERBY CITY  
GAMING

  
R2Architects





DERBY CITY  
GAMING

  
CHURCHILL DOWNS  
INCORPORATED

  
R2Architects





Existing Signs

Proposed Signs

View from southeast of the existing gaming facility and new proposed hotel

## Proposed Signs



## Existing Signs





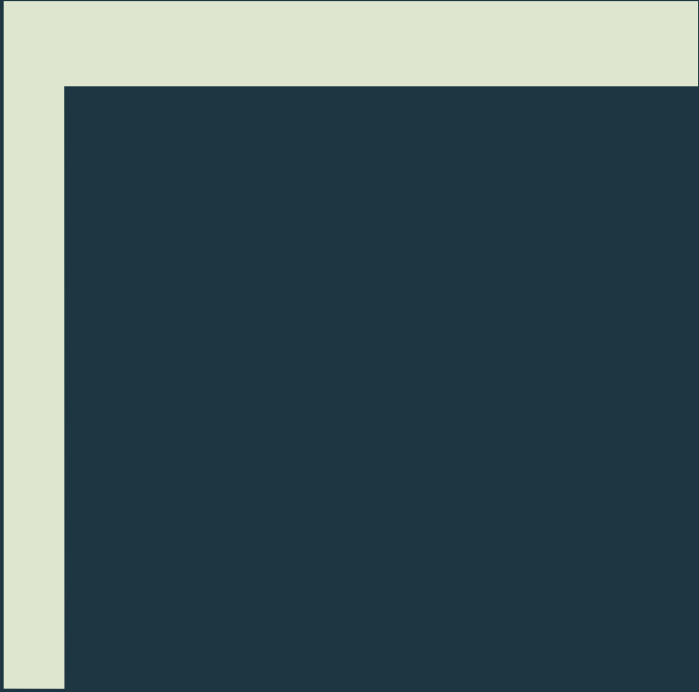


TAB 7  
PROPOSED ADDITIONAL  
BINDING ELEMENTS

# Proposed Additional Binding Elements

- Applicant shall have the KTC approved traffic signal installed at the entrance at Poplar Level Road within 6-months of approval of this rezoning.
- Applicant shall complete the storm water management improvements as shown on the December 2, 2021 presentation within 1-year of approval of this rezoning.





TAB 8  
TRAFFIC STUDY

# TRAFFIC IMPACT AND SIGNAL WARRANT STUDY



Updated  
October 29,  
2021

Derby City Gaming  
Planned 120 room Hotel & 400 Gaming Seats  
4520 Poplar Level Road (KY 864)  
Louisville – Jefferson County, Kentucky



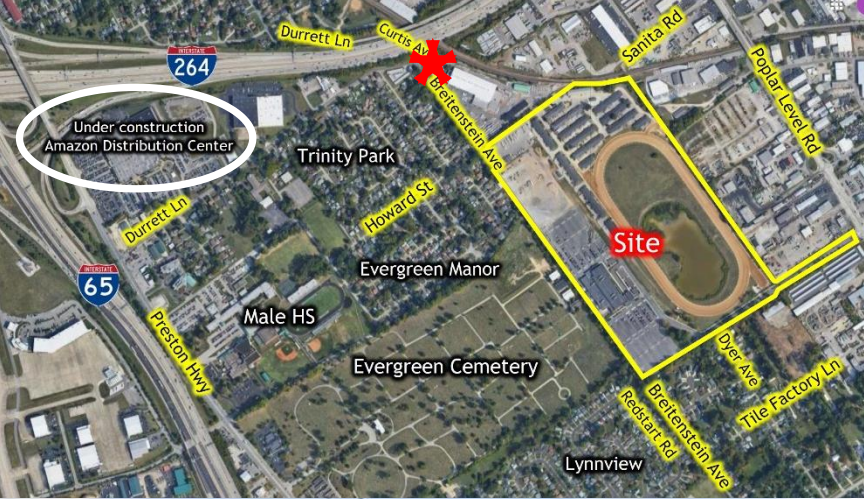


Estimated Level of Service / Average Vehicle Delay

Poplar Level Road -- (KY 864)	August 2021	Fall 2022	Fall 2022
Level of Service and Intersection Movement Delays (seconds per vehicle)	Existing PM Peak (Unsignalized)	Weekday PM Peak with planned DCG hotel and 400 gaming seats	Existing PM with a Derby City Gaming traffic signal
Poplar Level Road at Derby City	No existing traffic signal	As Unsignalized Intersection	LOS B, 12 with a traffic signal
Derby City Gaming Eastbound Left Turn	LOS F, 105	LOS F, 476	LOS E, 63
Derby City Gaming Eastbound Right Turn	LOS C, 17	LOS C, 19	LOS B, 13
Poplar Level Northbound Left Turn	LOS C, 16	LOS C, 20	LOS B, 10
Poplar Level Southbound Right Turn	Yield movement	Yield movement – no traffic signal	Yield movement – LOS A, 2
Poplar Level Northbound Through Lanes	Free-flow movement	Free-flow movement	LOS A, 6
Poplar Level Southbound Through Lanes	Free-flow movement	Free-flow movement	LOS B, 13


Estimated Level of Service / Average Vehicle Delay

Preston Hwy / Durrett Ln Level of Service (LOS) & Intersection Movement Delays (seconds per vehicle)	Sept. 2021	Fall 2022	Sept. 2021	Fall 2022
	Existing AM (7:15-8:15)	Future AM with <b>highest Amazon peak</b> , Marathon C-store and Derby City	Existing PM Peak Hour (4:30 to 5:30)	Future PM with <b>highest Amazon peak hour</b> , Marathon C-store & Derby City Gaming
Preston Highway KY 61 at Durrett Ln, tee intersection	Signalized Intersection	Signalized Intersection	Signalized Intersection	Signalized Intersection
Preston Hwy at Durrett (overall intersection LOS) and <b>without Derby City</b>	LOS A, 7	LOS C, 29 <b>LOS C, 27</b>	LOS B, 11	LOS C, 28 <b>LOS C, 24</b>
Preston Hwy Northbound and <b>without Derby City</b>	LOS A, 8	LOS C, 29 & <b>LOS C, 27</b>	LOS B, 12	LOS C, 30 & <b>LOS C, 24</b>
Preston Hwy Southbound & <b>without Derby City</b>	LOS A, 3	LOS C, 23 & <b>LOS C, 20</b>	LOS A, 4	LOS B, 16 & <b>LOS B, 12</b>
Durrett Lane Westbound & <b>without Derby City</b>	LOS C, 28	LOS D, 43 & <b>LOS D, 42</b>	LOS D, 52	LOS D, 52 & <b>LOS D, 52</b>



Durrett Lane and Breitenstein Ave entrance





TAB 9  
STATEMENT OF  
COMPLIANCE FILED WITH  
THE ORIGINAL ZONE  
CHANGE APPLICATION  
WITH ALL APPLICABLE  
GOALS OF THE 2040 PLAN,  
VARIANCE AND WAIVER  
JUSTIFICATIONS

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## **STATEMENT OF COMPLIANCE WITH ALL APPLICABLE GOALS, OBJECTIVES AND POLICIES OF THE “PLAN 2040” COMPREHENSIVE PLAN**

Applicant & Owner: Churchill Downs, Inc.

Location: 4520 Poplar Level Road

Proposed Use:

Request: Zone change from R-1 to C-2 with a CUP

Engineers, Land Planners, Landscape  
Architects: Vision Engineering

### **INTRODUCTION**

This is a proposed rezoning from R-1 to C-2 to allow Churchill Downs to be able to expand its existing Derby City Gaming facility and add a hotel on Poplar Level Road, with modified conditional use permit (CUP) for a longstanding racetrack, which years ago was down-zoned and granted a CUP for horse racing, training and stabling.

According to the applicant's and PDS research, the site was downzoned from M-2 to R-1, as said, in two cases — the first being in 1965 under Docket #9-69-65 when a portion of the site was rezoned and (what was formerly termed) a Special Use Permit was granted to permit an animal racetrack, and the remainder being in 1973 under Docket #9-153-72 to permit a horse barn to be constructed near the track. A related CUP was issued in 1974, under docket B-31-74, to permit the horse barn to be located on the site, with an associated dimensional variance approved under Docket #B-32-74 to allow the barn to be located closer than 100 feet to the property line. In 1988, under Docket #B-197-88, the site received a dimensional variance to allow a freestanding sign to encroach into the required front yard. Finally, in 2017 under Docket #17CUP1055, the aforementioned Special Use Permit was modified to permit construction of a new/replacement gaming facility as an accessory to the existing animal racetrack and training facility.

Churchill Downs' plan today does not call for an expansion of the site, although the proposed expanded gaming facility and new hotel appears to expand the building square footage beyond what was originally approved in terms of buildings and other structures to serve the track facility. That, and the fact the hotel is not considered a race track use, are the reasons for this rezoning. Thus proposed is a 135,000 square foot, 5-story addition, containing approximately 45,000 square feet on the ground floor (consisting of additional gaming space, a sports bar and restaurant) and 90,000 square feet on the 4 floors above that (containing 123 hotel rooms).

Poplar Level Road, which fronts this facility, is a major arterial highway. Along it are found a wide variety of intense commercial and industrial uses, abutting this site to the east, north and south along Poplar Level Road. Single-family residential uses are generally located deeper off



Poplar Level Road to the west, north and south, with Evergreen Cemetery sharing a significant length of common property line with the site to the west. I-264 is also located a very short distance north of this site.

#### **PLAN ELEMENT 4.1: COMMUNITY FORM**

**This “Application Package” complies with Plan Element 4.1, its 5 Goals and their Objectives plus the following Policies.**

**As to Goal 1, Policies 2.1, 3.1.10, 4, 6, 7, 8, 9 10, 11, 12, 14, 16, 17, 18, 19, 20 and 23, it complies as follows, in addition to the other ways set forth above and below:**

The site is located in the Suburban Workplace Form District, which is a form characterized by predominately industrial and office uses where the buildings are supposedly set back from the street in a landscaped setting. This form district is supposed to contain a single large-scale use or a cluster of uses within a master planned development. The Derby City Gaming facility, both as it exists and as planned, surely fits within this characterization of this area, although not very many of the existing uses around it do, those being mostly older and constructed under the very different standards of the time in which they were built. Thus, Derby City Gaming plainly raises the bar in terms of site development and construction in the area.

In order to provide adequate transportation access in Suburban Workplaces, connected roads, public transportation and pedestrian facilities are encouraged, and significant screening and buffering are often necessary to protect potentially negatively impacted abutting uses. All of that already exists at the Derby City Gaming site, and the facility addition will assure that that continues under the new plan.

Given that the Derby City Gaming facility and racetrack already exist and operate at this site and that even more intense uses and zoning than this one also exist in the area as above-described, the proposed C-2 zoning will not constitute a non-residential expansion into a residential area. After all, the site is located along Poplar Level Road, a major arterial at this location, and is near existing industrial and commercial uses. Furthermore, the Derby City Gaming building expansion with hotel is not an industrial zoning use. Moreover from the list of permitted C-2 uses, the most intense ones can even be restricted by binding element, as need be. And air, noise and light emissions must comply with LMCO and LDC requirements.

Also, located as the Derby City Gaming facility expansion and unexpanded racetrack are just a short drive in all directions from sizable and ever-growing population centers, travel distances for workers are reduced. Derby City Gaming and the racetrack are also easily accessible off I-264 (the Watterson Expressway) and a major north-south arterial roadway (Poplar Level Road), and as such is readily accessible to its customer base. All of this helps contribute to improved air quality.

Quality building components and a design compatible with the existing Derby City Gaming building, plus quality landscaping together with the already existing, highly effective fence screening and buffering also help assure context-appropriateness and design-compatibility for the larger area and proximate residential neighborhoods.

Partly as a consequence of what surrounds this proposal and partly as a consequence of the facts that the racetrack is not expanding and that the Derby City Gaming facility is and will remain fully contained, except for its ample and highly organized parking, and will continue to have decent main access (with a valuable secondary and emergency access) and excellent internal circulation, impacts such as traffic, odors, noise and aesthetic factors will not prove to be nuisance factors.

Land Development Code required size and height restrictions, interior and perimeter landscaping, minimum parking, maximum lighting and signage, and required setbacks will be met.

**As to Goal 2, Policies 1, 2, 5, 6, 7, 15, 16 and 17, it complies as follows, in addition to the other ways set forth above and below:**

As said, the proposed Derby City Gaming building addition will be located in a Suburban Workplace Form District and will adjoin already built workplace and commercial facilities of an even more intensive kind as this one. As such and with decent vehicular access along Poplar Level Road and to and from the nearby Watterson Expressway, there already exist convenient vehicular connections to other commercial establishments as well as residential areas from which Derby City's workforce and customers arrive. Indeed the proposed Derby City Gaming facility expansion is part of a large mixed use activity center. And it will also have easy access to Louisville's interstate highway system beyond that of just the Watterson Expressway leading to and from downtown, the airport and other population centers in Kentucky and Southern Indiana.

**As to Goal 3, Policies 8, 9 and 10, it complies as follows, in addition to the other ways set forth above and below:**

The proposed Derby City Gaming facility expansion and unexpanded racetrack do not impact natural features, wetlands, slopes or waterways.

**As to Goal 4,** the applicant/developer submits that no historic structures exist on this site.

**As to Goal 5,** the Derby City Gaming facility, both as it currently exists and as proposed for expansion, are highly designed to be unusually aesthetically attractive in its own right.

#### **PLAN ELEMENT 4.2: MOBILITY**

**This Application Package complies with Plan Element 4.2, its 3 Goals and their Objectives plus the following Policies.**

**As to Goal 1, Policies 1, 4 and 6; Goal 2, Policies 1, 2, 3, 4, 5, 6, 7, 8 and 9; and Goal 3, Policies 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 18, 20 and 21, it complies as follows, in addition to the other ways set forth above and below:**



This proposed Derby City Gaming facility expansion and existing unexpanded racetrack (located as they are within an existing and growing mixed use Suburban Workplace area proximate to other large commercial and industrial facilities, with good access off an arterial roadway and to and from the Watterson Expressway) is plainly part and parcel of a good road network. Churchill Downs will prepare construction plans that will continue to assure convenient and safe access with good site distances and turning radii.

Also, bike racks and handicapped parking spots will be installed as and where required near buildings. And all drive lanes and parking spaces will continue to be designed in accordance with Metro Public Works and Transportation Planning (MPW&TP) requirements. These are preliminarily depicted on the DDDP filed with this application.

Also an updated Traffic Impact Study (TIS) is being prepared and will be submitted to MPW&TP as part of this application, which hopefully might lead to a traffic signal at the Poplar Level Road access to this site and which will also assess other intersections that MPW&TP might deem potentially problematic.

TARC service is available along Poplar Level Road.

All necessary utilities are located proximate to this site and accessible by it via public right of way or easements.

#### **PLAN ELEMENT 4.3: COMMUNITY FACILITIES**

**This Application Package complies with Plan Element 4.3, applicable Goal 2, Policies 1, 2 and 3 as follows, in addition to the other ways set forth above and below:**

Fire-fighting, EMS and police services are provided by the City of Louisville. Sanitary sewer service via existing MSD facilities is also available.

#### **PLAN ELEMENT 4.4: ECONOMIC DEVELOPMENT**

**This Application Package complies with Plan Element 4.4, its two applicable Goals and their Objectives, plus the following Policies.**

**As to Goal 1, Policies 1 and 3 and as to Goal 2, Policies 1, 3 and 4, it complies as follows, in addition to the other ways set forth above and below:**

As Louisville Metro's population continues to grow, so does demand for employment opportunities of all types. This proposed Derby City Gaming facility expansion is part of Churchill Downs' response to that demand and as such promises increased opportunities for employment initially in the building trades and ultimately in the gaming and horse training, care and racing business.

It also increases the Metro Louisville tax base essential to the provision of government services, especially important after the worst economic setback since the Great Depression which has resulted from the current COVID crisis. If Louisville and Kentucky are to fully economically

rebound from this devastating occurrence, it will be because new employment growth opportunities are afforded like this one. That is why this Plan Element of the Comp Plan takes on such overriding significance at this point in Louisville's history.

#### **PLAN ELEMENT 4.5: LIVABILITY**

**This Application Package complies with Plan Element 4.5, its applicable Goals and their Objectives plus the following Policies.**

**As to Goal 1, Policies 5, 7, 10, 11, 12, 13, 15, 16, 23, 26, 27, 28, 30, 31, 32, 33 and 35; and Goal 4, Policies 1 and 2, it complies as follows, in addition to the other ways set forth above and below:**

Planned improvements to the storm water management plan will capture existing storm water that flows from a large watershed moving off-site to on-site, and that will be piped to the retention basin inside the oval track before it is released at a controlled rate of flow. These planned improvements will involve a significant increase in the size of the existing retention basin inside the track. Because the Derby City Gaming facility expansion and hotel addition will be constructed where parking lot pavement exists today and because the slightly more than 300 additional parking spaces will be constructed where compacted gravel already exists, there will be no increase in site-located impervious surface. As a consequence, the storm water improvements being planned are not required, yet they will be made anyway, thus to certain extents improving neighboring property owners' drainage situations. Furthermore, MSD regulations mandate that post-development peak rates of storm water run-off cannot exceed pre-development rates.

#### **PLAN ELEMENT 4.6: HOUSING**

**This Application Package complies with Plan Element 4.6, its 3 Goals and their Objectives**

As to these Goals, Objectives and Policies generally, while they don't specifically address developments of this kind, the proposed Derby City Gaming facility expansion and existing unexpanded racetrack nevertheless comply in that they will bring additional high-quality employment opportunities to Greater Louisville and this area so as to assure more good jobs proximate to where people live.

\* \* \*

For all of the above-stated reasons, those shown on the detailed district development plan (DDDP) and those explained at the LD&T meeting and Planning Commission public hearing, this application complies with all other applicable Goals, Objectives and Policies of the "Plan 2040" Comprehensive Plan.

Respectfully submitted,



---

William B. Bardenwerper  
Bardenwerper, Talbott & Roberts, PLLC  
Building Industry Association of Greater Louisville Bldg.  
1000 N. Hurstbourne Parkway, Second Floor  
Louisville, KY 40223

### **Variance Justification:**

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of Section 5.3.4.3.d. allow the building to exceed the 45' maximum building height in a transition zone.

1. The variance will not adversely affect the public health, safety or welfare because the transition zone is due to the site's Suburban Workplace Form District being adjacent to the Neighborhood Form District southwest of the site. The transition zone height limitations are designed to protect the adjoining Neighborhood Form District from impacts. In this case, the adjoining property is a cemetery, rather than a residential use. With the hotel being located toward the front of the building, only approximately 1/3<sup>rd</sup> will be in the 200' transition zone, the remainder will not.

2. The variance will not alter the essential character of the general vicinity because the site is largely an existing condition and existing use, with only the addition of a hotel partially located in the transition zone. The new hotel building will face internal to the site to the northeast limiting the impacts to the general vicinity. The closest residence is over 700 feet away, three times greater than the 200' transition zone.

3. The variance will not cause a hazard or a nuisance to the public because it is an aesthetic issue and not of a sufficient height to cause air travel concerns as confirmed by the applicant.

4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the adjoining use is a cemetery and the hotel has been located as far away from the subject property line and transition zone as possible.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an existing condition operating under nonconforming rights and conditional use permits rights.

2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because it would require moving the hotel further toward the horse training track solely for the purpose of avoiding the



cemetery property line.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because the existing condition of the property limited the areas that could be used for the hotel addition.

### **General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of the landscape buffer area requirements of Table 10.2.3 to allow an encroachment of the existing parking lot and drive aisle into the LBA along the south-west property line.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because it is an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit. With the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition. The applicable southwest property line of the subject site mostly adjoins a cemetery located in a R-1 zoning district, rather than single family residences. Further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use. The first residential homes along Cavelle Avenue are right where the proposed parking lot ends.
2. 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 Comp Plan 2040 filed with the rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts as the parking lot and the drive lane is not being changed or altered. Further, the applicant has already implemented the construction of fencing for mitigation along this property line.
4. 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 require the removal of the existing drive aisle due only to a change in zoning for a hotel addition on the other side of the building.

### **General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of Section 8.3.3.A.1 to exceed three signs on the front façade of the building for a total of six signs on the front façade of the building, including the hotel addition.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because the signs are internal to the site facing northeast toward the parking lot and horse training track. Due to the setback from Poplar Level Road and the M-2 and M-3 zoned properties in front of the subject site, the signs will likely not be visible from the road. The only residential homes that could conceivably see the front of the building are those along Dyer Avenue, being over 800 feet away with an 8' wood fence along that property line. As a result, this is one of the only cases where the front façade is almost completely an internal aspect of the site.
2. 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 Comp Plan 2040 filed with the rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the applicant is removing one of the existing signs from the gaming facility building as part of the new proposed hotel addition.
4. 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 the number of signs allowed including both the existing gaming facility building and also the new proposed hotel building, This is because the hotel building is connected to the gaming facility building. If the hotel was constructed with a separation between the buildings, the signs would be in compliance.



### **General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of **Section 5.7.1.B.3** to reduce the landscape buffer within the transition zone along the west and a portion of the south property lines.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because it is substantially the same as the waiver filed in this case for Table 10.2.3 to allow an encroachment of the existing parking lot and drive aisle into the LBA along the south-west property line (excluding the cemetery as not being a residential use). Both of these waivers are for an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit. With the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition. Further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use. The first residential homes along Cavelle Avenue are right where the proposed parking lot ends. A portion of the southwest property line of the subject site adjoins a cemetery located in a R-1 zoning district and presumably LDC 5.7.1.B.3 does not apply.
2. 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 Plan 2040 filed with the rezoning application and the waiver will not violate the Comprehensive Plan because there are no new potential impacts to be mitigated by this request.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts created because the parking lot and the drive lane are not being changed or altered. Further, the applicant has already implemented the construction of fencing for mitigation along this property line.
4. 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 require the removal of the existing drive aisle due only to a change in zoning for a hotel addition on the other side of the building.

### **General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of Section 8.2.1.D.4.b to allow LED changing image sign to comprise 100% of the subject sign.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because these changing image signs are an existing condition located on the northeast side of the building facing the horse training track and thus facing internal to the site. All of the surrounding properties on the north and east of the site are zoned M-2, which this property was originally zoned prior to be down zoned for the horse training facility. The changing image signs cannot be seen from Poplar Level Road, nor from the residential homes on Dyer Avenue, and thus do not adversely affect the adjacent property owners. Further, the signs are set back over 2,100 feet from Poplar Level Road, with trees and buildings blocking their visibility from Poplar Level Road.
2. 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 Plan 2040 filed with the rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the changing image signs are already in place and have been for 3 years with no complaints or issues.
4. 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 these signs are to promote the entertainment aspect of the venue which are ordinary and customary for this type of use. This is because these signs highlight the programming and excitement that takes place inside the venue. And as said, the signs have been in place for 3 years without complaints or negative impacts.

### **General Waiver Justification:**

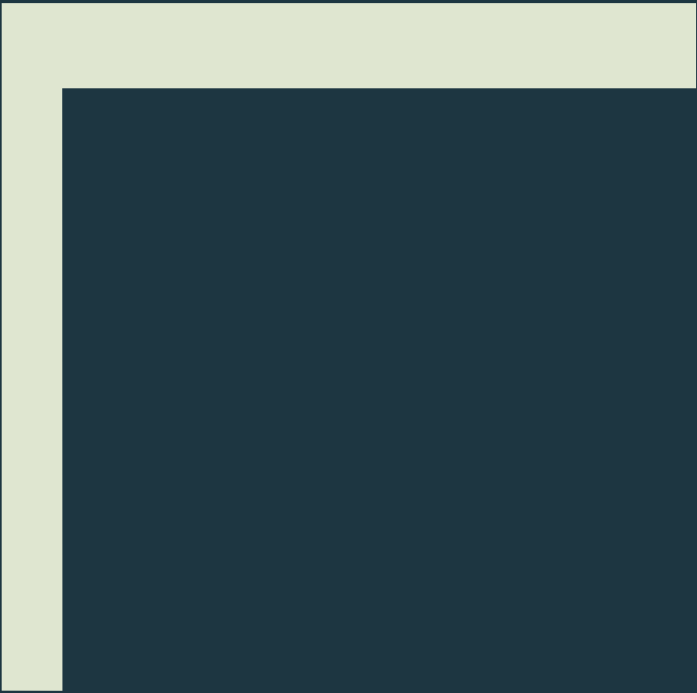
In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of Section 8.2.1.D.1 to allow a total of 3 LED changing image signs on the property.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because these 3 changing image signs are an existing condition located on the northeast side of the building facing the horse training track and thus facing internal to the site. All of the surrounding properties on the north and east of the site are zoned M-2, which this property was originally zoned prior to be down zoned for the horse training facility. The changing image signs cannot be seen from Poplar Level Road, nor from the residential homes on Dyer Avenue, and thus do not adversely affect the adjacent property owners. Further, the signs are set back over 2,100 feet from Poplar Level Road, with trees and buildings blocking their visibility from Poplar Level Road.
2. 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 Plan 2040 filed with the rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the changing image signs are already in place and have been for 3 years with no complaints or issues. All 3 signs were shown on the elevations presented to the Board of Zoning Adjustment as part of the modified CUP approved in 2017 in 17CUP1055.
4. 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 these signs are to promote the entertainment aspect of the venue which are ordinary and customary for this type of use. This is because the 3 signs highlight the programming and excitement that takes place inside the venue. And as said, the signs have been in place for 3 years without complaints or negative impacts.





TAB 10  
PROPOSED FINDINGS OF  
FACT PERTAINING TO  
COMPLIANCE WITH THE  
2040 PLAN, VARIANCE  
AND WAIVER CRITERIA

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## PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH ALL APPLICABLE GOALS OF THE 2040 PLAN

Applicant & Owner: Churchill Downs, Inc.  
Location: 4520 Poplar Level Road  
Proposed Use:  
Request: Zone change from R-1 to C-2 with a CUP  
Engineers, Land Planners, Landscape  
Architects: Vision Engineering

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on December 2, 2021 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

### INTRODUCTION

**WHEREAS**, this is a proposed rezoning from R-1 to C-2 to allow Churchill Downs to be able to expand its existing Derby City Gaming facility and add a hotel on Poplar Level Road, with modified conditional use permit (CUP) for a longstanding racetrack, which years ago was downzoned and granted a CUP for horse racing, training and stabling; and

**WHEREAS**, according to the applicant's and PDS research, the site was downzoned from M-2 to R-1, as said, in two cases — the first being in 1965 under Docket #9-69-65 when a portion of the site was rezoned and (what was formerly termed) a Special Use Permit was granted to permit an animal racetrack, and the remainder being rezoned in 1973 under Docket #9-153-72 to permit a horse barn to be constructed near the track; a related CUP was issued in 1974, under docket B-31-74, to permit the horse barn to be located on the site, with an associated dimensional variance approved under Docket #B-32-74 to allow the barn to be located closer than 100 feet to the property line; in 1988, under Docket #B-197-88, the site received a dimensional variance to allow a freestanding sign to encroach into the required front yard; and in 2017 and 2018 under Docket #17CUP1055 and #18VARIANCE1031, the aforementioned Special Use Permit was modified to permit construction of a new/replacement gaming facility as an accessory to the existing animal racetrack and training facility; and

**WHEREAS**, Churchill Downs' plan today does not call for an expansion of the site, although the proposed expanded gaming facility and new hotel appears to expand the building square footage beyond what was originally approved in terms of buildings and other structures to serve the track facility; that, and the fact the hotel is not considered a race track use, are the reasons for this rezoning; thus proposed is a 135,000 square foot, 5-story addition, containing approximately

45,000 square feet on the ground floor (consisting of additional gaming space, a sports bar and restaurant) and 90,000 square feet on the 4 floors above that (containing 123 hotel rooms) ; and

**WHEREAS**, Poplar Level Road, which fronts this facility, is a major arterial highway; along it are found a wide variety of intense commercial and industrial uses, abutting this site to the east, north and south along Poplar Level Road; single-family residential uses are generally located deeper off Poplar Level Road to the west, north and south, with Evergreen Cemetery sharing a significant length of common property line with the site to the west; and I-264 is also located a very short distance north of this site; and

#### **PLAN ELEMENT 4.1: COMMUNITY FORM**

**WHEREAS**, to Goal 1, Policies 2.1, 3.1.10, 4, 6, 7, 8, 9 10, 11, 12, 14, 16, 17, 18, 19, 20 and 23, it complies as follows, because the site is located in the Suburban Workplace Form District, which is a form characterized by predominately industrial and office uses where the buildings are supposedly set back from the street in a landscaped setting; this form district is supposed to contain a single large-scale use or a cluster of uses within a master planned development; the Derby City Gaming facility, both as it exists and as planned, fits within this characterization of this area, although not very many of the existing uses around it do, those being mostly older and constructed under the very different standards of the time in which they were built; and

**WHEREAS**, in order to provide adequate transportation access in Suburban Workplaces, connected roads, public transportation and pedestrian facilities are encouraged, and significant screening and buffering are often necessary to protect potentially negatively impacted abutting uses; and all of that already exists at the Derby City Gaming site, and the KTC approved traffic signal at the entrance to be installed with the facility addition will assure that that continues under the new plan; and

**WHEREAS**, given that the Derby City Gaming facility and racetrack already exist and operate at this site and that even more intense uses and zoning than this one also exist in the area as above-described, the proposed C-2 zoning will not constitute a non-residential expansion into a residential area; after all, the site is located along Poplar Level Road, a major arterial at this location, and is near existing industrial and commercial uses; furthermore, the Derby City Gaming building expansion with hotel is not an industrial zoning use; and air, noise and light emissions must comply with LMCO and LDC requirements; and

**WHEREAS**, located as the Derby City Gaming facility expansion and unexpanded racetrack are just a short drive in all directions from sizable and ever-growing population centers, travel distances for workers are reduced; Derby City Gaming and the racetrack are also easily accessible off I-264 (the Watterson Expressway) and a major north-south arterial roadway (Poplar Level Road), and as such is readily accessible to its customer base; and all of this helps contribute to improved air quality; and

**WHEREAS**, quality building components and a design compatible with the existing Derby City Gaming building, plus quality landscaping together with the already existing, effective fence screening and buffering also help assure context-appropriateness and design-compatibility for the larger area and proximate residential neighborhoods; and



**WHEREAS**, partly as a consequence of what surrounds this proposal and partly as a consequence of the fact that the racetrack is not expanding and that the Derby City Gaming facility is and will remain fully contained, except for its ample and highly organized parking, and will have an improved main access with the traffic signal (with a valuable secondary and emergency access) and excellent internal circulation, impacts such as traffic, odors, noise and aesthetic factors will not prove to be nuisance factors; and

**WHEREAS**, Land Development Code required size restrictions, interior and perimeter landscaping, minimum parking, maximum lighting, and required setbacks will be met, other than as set forth on the requested waivers and variance; and

**WHEREAS**, to Goal 2, Policies 1, 2, 5, 6, 7, 15, 16 and 17, it complies as follows, because as said, the proposed Derby City Gaming building addition will be located in a Suburban Workplace Form District and will adjoin already built workplace and commercial facilities of an even more intensive kind as this one; as such and with decent vehicular access along Poplar Level Road and to and from the nearby Watterson Expressway, there already exist convenient vehicular access to other commercial establishments as well as residential areas from which Derby City's workforce and customers arrive; indeed the proposed Derby City Gaming facility expansion is part of a large mixed use activity center; and it will also have easy access to Louisville's interstate highway system beyond that of just the Watterson Expressway leading to and from downtown, the airport and other population centers in Kentucky and Southern Indiana; and

**WHEREAS**, to Goal 3, Policies 8, 9 and 10, it complies as follows, because the proposed Derby City Gaming facility expansion and unexpanded racetrack do not impact natural features, wetlands, slopes or waterways; and

**WHEREAS**, to Goal 4, the applicant/developer submits that no historic structures exist on this site; and

**WHEREAS**, to Goal 5, the Derby City Gaming facility, both as it currently exists and as proposed for expansion, are highly designed to be aesthetically attractive in its own right; and

#### **PLAN ELEMENT 4.2: MOBILITY**

**WHEREAS**, to Goal 1, Policies 1, 4 and 6; Goal 2, Policies 1, 2, 3, 4, 5, 6, 7, 8 and 9; and Goal 3, Policies 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 18, 20 and 21, it complies as follows, because this proposed Derby City Gaming facility expansion and existing unexpanded racetrack (located as they are within an existing and growing mixed use Suburban Workplace area proximate to other large commercial and industrial facilities, with good access off an arterial roadway and to and from the Watterson Expressway) is plainly part and parcel of a good road network; Churchill Downs will prepare construction plans that will continue to assure convenient and safe access with good site distances and turning radii, along with improved access through the traffic signal to be installed at the main entrance; and

**WHEREAS**, bike racks and handicapped parking spots will be installed as and where required near buildings; and all drive lanes and parking spaces will continue to be designed in accordance

with Metro Public Works and Transportation Planning (MPW&TP) requirements; and these are preliminarily depicted on the DDDP filed with this application; and

**WHEREAS**, an updated Traffic Impact Study (TIS) was prepared and submitted to MPW&TP as part of this application, which demonstrates acceptable levels of service for the intersections designated for review; and

**WHEREAS**, TARC service is available along Poplar Level Road; and

**WHEREAS**, all necessary utilities are located proximate to this site and accessible by it via public right of way or easements; and

#### **PLAN ELEMENT 4.3: COMMUNITY FACILITIES**

**WHEREAS**, this application Package complies with Plan Element 4.3, applicable Goal 2, Policies 1, 2 and 3 as follows, because fire-fighting, EMS and police services are provided by the City of Louisville; and sanitary sewer service via existing MSD facilities is also available; and

#### **PLAN ELEMENT 4.4: ECONOMIC DEVELOPMENT**

**WHEREAS**, to Goal 1, Policies 1 and 3 and as to Goal 2, Policies 1, 3 and 4, it complies as follows, because as Louisville Metro's population continues to grow, so does demand for employment opportunities of all types; this proposed Derby City Gaming facility expansion is part of Churchill Downs' response to that demand and as such promises increased opportunities for employment initially in the building trades and ultimately in the gaming and horse training, care and racing business; and

**WHEREAS**, it also increases the Metro Louisville tax base essential to the provision of government services, especially important after the worst economic setback since the Great Depression which has resulted from the current COVID crisis; if Louisville and Kentucky are to fully economically rebound from this devastating occurrence, it will be because new employment growth opportunities are afforded like this one; and that is why this Plan Element of the Comp Plan takes on such overriding significance at this point in Louisville's history; and

#### **PLAN ELEMENT 4.5: LIVABILITY**

**WHEREAS**, to Goal 1, Policies 5, 7, 10, 11, 12, 13, 15, 16, 23, 26, 27, 28, 30, 31, 32, 33 and 35; and Goal 4, Policies 1 and 2, it complies because planned improvements to the storm water management plan will capture existing storm water that flows from a large watershed moving off-site to on-site, and that will be piped to the retention basin inside the oval track before it is released at a controlled rate of flow; these planned improvements will involve a significant increase in the size of the existing retention basin inside the track; because the Derby City Gaming facility expansion and hotel addition will be constructed where parking lot pavement exists today and because the slightly more than 300 additional parking spaces will be constructed where compacted gravel already exists, there will be no increase in site-located impervious surface; as a consequence, the storm water improvements being planned are not required, yet they will be made anyway, thus to certain extents improving neighboring property owners' drainage situations; and

furthermore, MSD regulations mandate that post-development peak rates of storm water run-off cannot exceed pre-development rates; and

**PLAN ELEMENT 4.6: HOUSING**

**WHEREAS**, this Application Package complies with Plan Element 4.6, its 3 Goals and their Objectives because while they don't specifically address developments of this kind, the proposed Derby City Gaming facility expansion and existing unexpanded racetrack nevertheless comply in that they will bring additional high-quality employment opportunities to Greater Louisville and this area so as to assure more good jobs proximate to where people live; 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 Goals of the 2040 Plan;

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby recommends to the Louisville Metro Council that it rezone the subject property from R-1 to C-2 and approves the Detailed District Development Plan; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Conditional Use Permit.



Variance Findings of Fact

Variance of Section 5.3.4.3.d. allow the building to exceed the 45' maximum building height in a transition zone.

**WHEREAS**, the variance will not adversely affect the public health, safety or welfare because the transition zone is due to the site's Suburban Workplace Form District being adjacent to the Neighborhood Form District southwest of the site; the transition zone height limitations are designed to protect the adjoining Neighborhood Form District from properties impact; in this case, the adjoining property is a cemetery, rather than a residential use; and with the hotel being located toward the front of the building, only approximately 1/3<sup>rd</sup> will be in the 200' transition zone necessitating a variance, the remainder will not require a variance; and

**WHEREAS**, the variance will not alter the essential character of the general vicinity because the site is largely an existing condition and existing use, with the addition of a hotel partially located in the transition zone; the new hotel building will face northeast internal to the site, limiting the impacts to the general vicinity; and the closest residence to the hotel addition is over 700 feet away, three times greater than the 200' transition zone; and

**WHEREAS**, the variance will not cause a hazard or a nuisance to the public because it is an aesthetic issue and not of a sufficient height to cause air travel concerns as confirmed by the applicant; and

**WHEREAS**, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the adjoining use is a cemetery and the hotel has been located on the site as far away from the subject property line and transition zone as possible; and

**WHEREAS**, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an existing condition operating under nonconforming rights and conditional/special use permits rights; and

**WHEREAS**, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because it would require moving the hotel further toward the horse training track solely for the purpose of avoiding impacts to the cemetery property line; and

**WHEREAS**, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because the existing condition of the property limited the areas that could be used for the hotel addition; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Variance.

Waivers Findings of Fact

Waiver of Section 8.2.1.D.1 to allow a total of 4 LED changing image signs on the property.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because these 4 changing image signs are an existing condition located on the northeast side of the building facing the horse training track and thus facing internal to the site and at the entrance on Poplar Level road; all of the surrounding properties on the north and east of the site are zoned M-2, which this property was originally zoned prior to being down zoned for the horse training facility; the changing image signs cannot be seen from Poplar Level Road at the entrance, nor from the residential homes on Dyer Avenue, and thus do not adversely affect the adjacent property owners; further, the signs are set back over 2,100 feet from Poplar Level Road, with trees and buildings blocking their visibility from Poplar Level Road at the entrance; 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 Plan 2040 filed with the rezoning application; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the changing image signs are already in place and have been for 3 years with no complaints or issues; all 3 signs were shown on the elevations presented to the Board of Zoning Adjustment as part of the modified CUP approved in 2017 in 17CUP1055 with the sign at the entrance approved by sign permit; 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 these signs are to promote the entertainment aspect of the venue which are ordinary and customary for this type of use; this is because the 4 signs highlight the programming and excitement that takes place inside the venue; and as said, the signs have been in place for 3 years without complaints or negative impacts; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 8.2.1.D.4.b to allow LED changing image sign to comprise 100% of the subject sign.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because these three changing image signs are an existing condition located on the northeast side of the building facing the horse training track and thus face internal to the site; all of the surrounding properties on the north and east of the site are zoned M-2, which this property was originally zoned prior to be down zoned for the horse training facility; the changing image signs cannot be seen from Poplar Level Road at the entrance, nor from the residential homes on Dyer Avenue, and thus do not adversely affect the adjacent property owners; further, the signs are set back over 2,100 feet from Poplar Level Road, with trees and buildings blocking their visibility from Poplar Level Road at the entrance; 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 Plan 2040 filed with the rezoning application; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the changing image signs are already in place and have been for 3 years with no complaints or issues; 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 these signs are to promote the entertainment aspect of the venue which are ordinary and customary for this type of use; this is because these signs highlight the programming and excitement that takes place inside the venue; and as said, the signs have been in place for 3 years without complaints or negative impacts; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 5.7.1.B.3 to reduce the landscape buffer within the transition zone along the west and a portion of the south property lines.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because it is substantially the same as the waiver filed in this case for Table 10.2.3 to allow an encroachment of the existing parking lot and drive aisle into the LBA along the south-west property line (excluding the cemetery as not being a residential use); both of these waivers are for an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit; with the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition; further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use; the first residential homes along Cavelle Avenue are right where the proposed parking lot ends; and a portion of the southwest property line of the subject site adjoins a cemetery located in a R-1 zoning district and presumably LDC 5.7.1.B.3 does not apply; 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 Plan 2040 filed with the rezoning application and the waiver will not violate the Comprehensive Plan because there are no new potential impacts to be mitigated by this request; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts created because the parking lot and the main drive lanes are not being changed or altered; further, the applicant has already implemented the construction of fencing for mitigation along this property line; 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 require the removal of the existing drive aisle due only to a change in zoning for a hotel addition located mainly on the other side of the building; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Waiver.



Waiver Findings of Fact

Waiver of the landscape buffer area requirements of Table 10.2.3 to allow an encroachment of the existing parking lot and drive aisle into the LBA along the south-west property line.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because it is an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit; with the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition; the applicable southwest property line of the subject site mostly adjoins a cemetery located in a R-1 zoning district, rather than single family residences; further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use; the first residential homes along Cavelle Avenue are right where the proposed parking lot ends; 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 Comp Plan 2040 filed with the rezoning application; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts as the parking lot and the main drive lanes is not being changed or altered; further, the applicant has already implemented the construction of fencing for mitigation along this property line; 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 require the removal of the existing drive aisle due only to a change in zoning for a hotel addition located mainly on the other side of the building; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 8.3.3.A.1 to exceed three signs on the front façade of the building for a total of seven signs on the front façade of the building, including the hotel addition.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because the signs are internal to the site facing northeast toward the parking lot and horse training track; due to the setback from Poplar Level Road and the M-2 and M-3 zoned properties in front of the subject site, the signs will likely not be visible from the road; the only residential homes that could conceivably see the front of the building are those along Dyer Avenue, being over 800 feet away with an 8' wood fence along that property line; as a result, this is one of the only cases where the front façade is almost completely an internal aspect of the site; 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 Comp Plan 2040 filed with the rezoning application; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the applicant of the two new proposed signs with the hotel addition have a minor overall effect and is needed for the hotel; 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 the number of signs allowed including both the existing gaming facility building and also the new proposed hotel building, this is because the hotel building is connected to the gaming facility building; if the hotel was constructed with a separation between the buildings, the two new signs would be in compliance; and

**NOW, THEREFORE**, the Louisville Metro Planning Commission hereby approves this Waiver.