

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
February 6, 2014**

A meeting of the Louisville Metro Planning Commission was held on Thursday, February 6, 2014 at 1:30 p.m. in the Mayor's Gallery, located on the 4th floor of Metro Hall, 527 W. Jefferson Street, Louisville, Kentucky.

**Commission members present:**

Donnie Blake, Chair  
David Proffitt, Vice Chair  
Jeff Brown  
David Tomes  
Vince Jarboe  
Robert Kirchdorfer  
Clifford Turner

**Commission members absent:**

Tawana Hughes  
Chip White  
Robert Peterson

**Staff Members present:**

Emily Liu, Director, Planning & Design Services  
John G. Carroll, Legal Counsel  
Jonathan Baker, Legal Counsel  
Joseph Reverman, Planning Supervisor  
Julia Williams, Planner II  
Matthew Doyle, Planner II  
Rebecca Simmons, Management Assistant (sign-ins)  
Chris Cestaro, Management Assistant (minutes)

The following matters were considered:

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**Approval of Minutes**

**Approval of the minutes of the January 16, 2014 Annual meeting of the Planning Commission**

On a motion by Commissioner Tomes, the following resolution was adopted:

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of the Louisville Metro Planning Commission Annual Meeting.

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: No one.**

**Approval of the minutes of the January 16, 2014 regular meeting of the Planning Commission**

On a motion by Commissioner Tomes, the following resolution was adopted:

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of the regular meeting of the Louisville Metro Planning Commission.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: Commissioner Proffitt.**

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**Public Hearing**

**Case No. 17611**

**Project Name:** Baxter Tracts

**Location:** 611 – 617 Baxter Avenue

**Owners/Applicants:** Glenmary Investment Group, LLC  
615 Baxter Avenue  
Louisville, KY 40204

Encino LLC  
223 North Hite Avenue  
Louisville, KY 40206

**Representatives:** Deborah Bilitski  
Wyatt, Tarrant & Combs LLP  
500 West Jefferson Street Suite 2800  
Louisville, KY 40202

John Miller  
Miller/Wihry LLC  
1387 South Fourth Street  
Louisville, KY 40206

**Jurisdiction:** Louisville Metro  
**Council District:** 4 – David Tandy

**Case Manager:** **Joseph Reverman, 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.)

**Request:**

✓ A change in zoning from R-6 Multi-Family Residential to C-1 Commercial; a Detailed District Development Plan; Landscape Waivers; and a Variance are being requested.

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**Agency Testimony:**

Joseph Reverman presented the case and showed a Power Point presentation (see staff report and file for detailed exhibits.)

In response to a question from Commissioner Brown, Mr. Reverman confirmed that a formerly-requested sidewalk waiver has been **withdrawn**. Although it was still listed on the staff report, he confirmed that this was an error and should have been deleted. The applicant is providing sidewalks.

Mr. Reverman handed out binding elements proposed by the applicant (on file.)

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

Deborah Bilitski, Wyatt, Tarrant & Combs LLP, 500 West Jefferson Street Suite 2800, Louisville, KY 40202

John Miller, Miller/Wihry LLC, 1387 South Fourth Street, Louisville, KY 40206

Kevin Jagers, 2093 Sherwood Avenue, Louisville, KY 40205

Beth Darryl (sp), 1115 Rogers Street, Louisville, KY

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

Deborah Bilitski, the applicant's representative, said the properties currently consist of some non-conforming uses which is part of the reason for the rezoning request. Also, the applicant would like to construct some improvements on the property. She briefly discussed the property which had suffered fire damage and needed to be demolished; a new building will be constructed there. The applicant is proposing to construct an office and storage building at the rear of the property. She said that rear area is currently one large, wide-open paved parking area with no landscape buffer or defined access points. The applicant is proposing to re-pave and restripe the parking areas and add a landscape buffer area where none currently exists. There will also be an underground detention basin added.

She discussed the variance and landscape waiver requests (on file with application.) She read the binding elements into the record, as follows:

1. The applicant shall solicit the input of the Irish Hill Neighborhood Association on the proposed landscape plantings prior to submitting the landscape plan to Louisville Metro Planning and Design Services for approval.

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2. Heavy trucks with two or more rear axles shall not be parked overnight on the subject property.

Commissioner Proffitt asked what would be done (changes made) to the existing structures. Ms. Bilitski said no major structural changes would be made, except to the fire-damaged building which will have to be demolished and replaced. She said there would be some small additions to the remaining buildings (a breezeway constructed between two of the buildings, and an exterior staircase added to one of the buildings. See renderings, on file.) She said nothing would be added along the front facades.

In response to a question from Commissioner Turner, Ms. Bilitski said the breezeway would be on the second level.

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

No one spoke.

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

No one spoke.

**Rebuttal:**

There was no rebuttal, since no one spoke in opposition.

**Discussion:**

All of the Commissioners agreed that this is an appropriate request and use of the land. In response to a question from Commissioner Blake, the Commissioners also agreed that they felt that the applicant's justifications for the waiver requests were also appropriate.

**An audio recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to obtain a copy. The recording of this hearing will be found on the CD of the February 6, 2014 public hearing proceedings.**

**Zoning**

On a motion by Commissioner Proffitt, the following resolution was adopted:

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposed change in zoning from R-6 Multi-Family Residential to C-1 Commercial on the properties located at 611 – 617 Baxter Avenue complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan (the “Comprehensive Plan”) because the subject property is located within an existing activity center along the Baxter Avenue commercial corridor in the Traditional Neighborhood Form District; the properties immediately to the south of the subject property as well as directly across Baxter Avenue are zoned C-1 Commercial; the proposed development will introduce a mixture of neighborhood-serving uses, including offices and shops, in an appropriate location and will preserve the existing grid pattern of streets, sidewalks, and alleys; adequate parking is provided on site and on the adjacent street to accommodate the needs of the proposed development; the parking area is located behind the buildings and will be accessed from the rear consistent with a traditional pattern of development; and the proposed new building construction incorporates materials and design features that are compatible with the character of the surrounding area and comply with the Traditional Neighborhood design standards set forth in the Land Development Code; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guideline 2 of the Comprehensive Plan because it will encourage new development and rehabilitation of existing buildings to provide a mixture of commercial, office, and residential uses; the subject property is located in an existing commercial activity center along Baxter Avenue, with commercial uses immediately to the south and across Baxter Avenue to the west, and residential uses to the north and east; the proposed development will contribute to the overall mixture of uses in the area, is compatible with the existing development pattern, and consistent with the Traditional Neighborhood Form District; the subject property is currently served by all necessary utilities and infrastructure, and the proposed development will preserve existing buildings, streets, alleys, and sidewalks; the subject property is located along a busy commercial corridor that is served by public transit, public sidewalks exist along the frontage, and parking is located at the rear to balance safety, traffic, transit, pedestrian, and aesthetic concerns, therefore, the proposed development is compact and will result in the efficient use of land; and the proposed mixture of compatible uses will reduce vehicle trips, support the use of alternative forms of transportation, and encourage vitality and sense of place in this traditional neighborhood; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guideline 3 of the Comprehensive Plan because the subject property is located in a mixed-use area along a busy commercial corridor that includes

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commercial, office, and residential uses; the proposed rezoning from R-6 to C-1 to allow a mixed use development is, therefore, compatible with existing zoning and will cause no adverse impacts to the surrounding area; three of the four existing buildings will be preserved, ensuring that the existing development pattern is maintained; the building located at 613 Baxter Avenue, which has been destroyed by fire damage, will be removed and replaced with a building that is consistent in design, materials, and character with the remaining buildings on site and the surrounding area; and outdoor lighting and signage will comply with Land Development Code requirements and will not negatively affect nearby residential properties; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guideline 3 of the Comprehensive Plan because the subject property is appropriately located along a mass transit corridor and the existing sidewalks will be preserved along Baxter Avenue, ensuring that the proposed development is highly accessible by all modes of transportation, including pedestrian, bicycle, and transit; the subject property will contain sufficient parking on-site to serve the needs of the proposed development, including handicap-accessible spaces in accordance with local, state, and federal requirements; parking is located behind the buildings and accessed from the rear in conformance with a traditional neighborhood pattern of development; and the proposed setbacks, building heights, and architectural design preserve the character of the Baxter Avenue corridor and will ensure the development is compatible with the surrounding area; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guidelines 4 and 5 of the Comprehensive Plan because the subject property contains no environmental limitations and there are no natural, scenic, or historic resources that would inhibit the proposed development; due to the size of the subject property, no open space is required to be provided on site; three of the existing buildings are proposed to be preserved, and the fourth building will be replaced with one that is compatible in terms of height, bulk, scale, design, and placement, ensuring that the architectural integrity and character of the Baxter Avenue corridor is maintained; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guideline 6 of the Comprehensive Plan because the subject property is located in an existing activity center along the Baxter Avenue commercial corridor; and the proposed development represents a significant investment in the redevelopment and rehabilitation of an older neighborhood in a manner that is consistent with the Traditional Neighborhood Form District; and

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**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guidelines 7, 8, and 9 of the Comprehensive Plan because it is located on Baxter Avenue, a major arterial roadway, which has adequate carrying capacity to handle traffic going to and from the development; the subject property is located on an existing transit route, and the existing sidewalks along Baxter Avenue will be preserved, ensuring that the proposed uses are easily accessible by bicycles, pedestrians, and motor vehicles; the proposed development is designed to facilitate safe vehicular and pedestrian access to the property because parking is behind the buildings and accessed from Bishop Street, which functions like an alley; adequate parking spaces are provided on the subject property as required by the Land Development Code, including handicap accessible spaces as required by the ADA; therefore, the proposal accommodates all modes of transportation, provides bicycle and pedestrian connections to surrounding properties, and is appropriately located for the proposed density and intensity; by providing a mixture of compatible uses, the proposed development will enable area residents and future employees to minimize vehicular miles traveled, as well as total travel time, in order to minimize air pollution and to conserve fuel; and the development is located to take advantage of the existing transportation system to complement the overall development of the area without the need for additional roadway or utility construction; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guidelines 10 and 11 of the Comprehensive Plan because the subject site is not located in the 100-year flood plain, and there are no streams, wetlands, or waterways on the site; an erosion prevention and sediment control plan will be implemented prior to construction utilizing best management practices as required by the Metropolitan Sewer District; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development; and

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guideline 12 of the Comprehensive Plan because the proposal represents an efficient land use pattern and utilizes current traffic patterns; the mixture of uses being proposed on the subject property will enable and promote a reduction in vehicle miles traveled and increased pedestrian travel, resulting in a reduction in commuting time and transportation-related air pollution; the subject site is located on a major arterial and the existing roadway infrastructure provides adequate capacity for the traffic going to and from the development; and the development plan has been reviewed by the Air Pollution and Control District, which provided no comment on adverse air quality impact; and



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**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guideline 13 of the Comprehensive Plan, because it meets the landscape requirements of the Land Development Code; landscape buffer areas will be provided on the subject property to enhance the aesthetic quality of the site; and outdoor signage and lighting will comply with the Land Development Code and will be compatible with the surrounding area;

**WHEREAS**, the Commission further finds that the proposed rezoning complies with Guidelines 14 and 15 of the Comprehensive Plan because the subject property is served by existing infrastructure and all necessary utilities, including water, electricity, telephone, and cable are available; and the development has an adequate supply of potable water and water for fire-fighting purposes and is served by the Louisville Fire Department; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore  
be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby  
**RECOMMEND** to the legislative council of Louisville Metro Government that the change in zoning from R-6 Multi-Family Residential to C-1 Commercial on property located at 611-617 Baxter Avenue as described in the attached legal description, be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: No one.**

Jonathan Baker, legal counsel for the Planning Commission, suggested that the development plan and the accompanying variance and waivers could be voted on together. Commissioner Brown asked if the neighbors supported the binding elements as they were presented today. Ms. Bilitski said there is a neighbors' representative present today, who was also present at LD&T meeting, who has seen the binding elements and is in support. Beth Darryl (sp), a resident who is on the board of the Irish Hill Neighborhood Association, said the binding

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elements addressed the residents' concerns and the Association is now in favor of the rezoning and the project.

**Detailed District Development Plan, Variance, Landscape Waivers, and Binding Elements**

On a motion by Commissioner Proffitt, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, the Commission further finds that 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**, the Commission further finds that there are no open space requirements with the current proposal. Future multi-family developments proposed on the subject site will be required to meet Land Development Code requirements; and

**WHEREAS**, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

**WHEREAS**, the Commission further finds that 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; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; and

**WHEREAS**, the Commission further finds that the requested variance of table 5.2.2 of the Land Development Code (LDC) to reduce the 5 ft rear yard setback along Bishop to St to 3 ft. will not adversely affect the public health, safety or welfare since safe vehicular and pedestrian access is being provided along Bishop Street; and

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**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the area is densely developed, since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since safe vehicular and pedestrian access is being provided along Bishop Street; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulation since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances that do not generally apply to land in the general vicinity or the same zone since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since this area of the property is already used for parking, and since the parking area will be screened from the right-of-way; and

**WHEREAS**, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

**WHEREAS**, the Commission further finds that the requested Landscape Waiver of section 10.2.10 of the Land Development Code (LDC) to reduce the 5 ft Vehicular Use Area (VUA) Landscape Buffer Area (LBA) along Bishop St to 3 ft. will not adversely affect adjacent property owners since safe vehicular and pedestrian access is being provided along Bishop Street, and since the parking area will be screened from the right-of-way; and

**WHEREAS**, the Commission further finds that the waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways

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through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. The waiver will not violate specific guidelines of Cornerstone 2020 since the proposed curb cuts and landscape screening will improve the appearance of the existing parking lot on the site; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the landscape screening is being provided to screen the parking lot from Bishop St, and since there is an existing parking lot on the site, and since the proposed curb cuts and landscape screening will improve the appearance of the existing parking lot on the site; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant since the proposed curb cuts and landscape screening will improve the appearance of the existing parking lot on the site; and

**WHEREAS**, the Commission further finds that the requested Landscape Waiver of section 10.2.4 of the Land Development Code (LDC) to reduce the 15 ft Landscape Buffer Area (LBA) along the northwest property line to 0 ft; (the 8 ft screen would still be provided) will not adversely affect adjacent property owners since the building on the site is existing and the site is located in a densely developed area, since this area of the property is already used for parking, and since the parking area will be screened from the adjacent property to the north; and

**WHEREAS**, the Commission further finds that Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate 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 the impacts from noise, lights and other potential impacts, and that parking and circulation

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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 air borne and water borne pollutants. The waiver will not violate specific guidelines of Cornerstone 2020 since the proposed fence will minimize the potential impacts of the parking lot to the adjacent lot to the north; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the building on the site is existing and the site is located in a densely developed area, since this area of the property is already used for parking, and since the parking area will be screened from the adjacent property to the north; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant since the building on the site is existing and the site is located in a densely developed area, since this area of the property is already used for parking, and since the parking area will be screened from the adjacent property to the north; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore  
be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for property located at 611 – 617 Baxter Avenue and being in Louisville Metro, **AND** the Variance of table 5.2.2 of the Land Development Code (LDC) to reduce the 5 ft rear yard setback along Bishop to St to 3 feet; **AND** the Landscape Waiver of section 10.2.10 of the Land Development Code (LDC) to reduce the 5 ft Vehicular Use Area (VUA) Landscape Buffer Area (LBA) along Bishop St to 3 feet; **AND** the Landscape Waiver of section 10.2.4 of the Land Development Code (LDC) to reduce the 15 ft Landscape Buffer Area (LBA) along the northwest property line to 0 feet, provided that the 8 ft screen would still be provided adjacent to the parking lot; and **SUBJECT** to the following Binding Elements:

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**Binding Elements**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee (and to the City of Lyndon, St. Matthews, Hurstbourne, or Middletown) for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, 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.
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.

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6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 6, 2014 Planning Commission meeting.
7. **The applicant shall solicit the input of the Irish Hill Neighborhood Association on the proposed landscape plantings prior to submitting the landscape plan to Louisville Metro Planning and Design Services for approval.**
8. **Heavy trucks with two or more rear axles shall not be parked overnight on the subject property.**

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: No one.**

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**Public Hearing**

**Case No. 13ZONE1013**

**Project Name:** Honest-1 Autocare

**Location:** 2801 North Hurstbourne Parkway

**Owner/Applicant:** S & L Ventures, LLC  
c/o Dale Schaffer  
4016 Spring Mill Place  
Louisville, KY 40245

**Representative:** William Bardenwerper  
Bardenwerper, Talbott & Roberts, PLLC  
1000 North Hurstbourne Parkway Suite 200  
Louisville, KY 40223

**Architect/Engineer:** Steve Scott  
Mindel, Scott & Associates  
5151 Jefferson Boulevard  
Louisville, KY 40219

**Jurisdiction:** Louisville Metro

**Council District:** 17 – Glen Stuckel

**Case Manager:** **Joseph Reverman, 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.)

**Request:**

Change in zoning from R-4 Single-Family Residential to C-2 Commercial; a Detailed District Development Plan; a Variance; and a Land Development Code Waiver.



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**Agency Testimony:**

Joseph Reverman presented the case and showed a Power Point presentation, which included maps and photos of the site and surrounding areas (see staff report and exhibits on file.) The site is currently vacant.

Mr. Reverman noted that, since the Land Development & Transportation Committee meeting, the applicant has provided access easements to the property to the north (existing commercial development) and to the property to the east (church), eliminating the waiver request.

He discussed the site plan, particularly a connection to Spring Bark Drive (to the east of the site.) The right-of-way was requested to allow a future connection to Spring Bark over to North Hurstbourne. This site was the subject of a rezoning case which was heard last year at a night hearing (The Paddock at Sawyer Park), a proposed multi-family development. That proposal connected Spring Bark Drive between two single-family subdivisions. At that time, the applicant agreed to install a gate so that the apartment community could not access Spring Bark Drive, but it did allow cross-access through Spring Bark Drive.

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

William Bardenwerper, Bardenwerper, Talbott & Roberts, PLLC, 1000 North Hurstbourne Parkway Suite 200, Louisville, KY 40223

Todd Lanning and Steve Scott, Mindel, Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

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

William Bardenwerper, the applicant's representative, showed a Power Point presentation, which included aerial photos and other maps and photos of the site and the surrounding areas. He gave a brief history of the site and the property, particularly the previously-proposed apartment development (The Paddock at Sawyer Park) which was not built. He discussed the Spring Bark Drive connection in more detail (see applicant's presentation, on file.) He said that, at LD&T, concerns were raised about connecting to the Hagan site (or at least providing for that connection); and making a stub street into the Watkins United Methodist Church property. He said that, with this plan, a connection has been provided to the east. He showed photos of the adjoining Hagan property and explained that there really isn't a place to connect there. There is one possible connection, but it is a one-way road.

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He discussed the request to exceed the maximum 80-foot setback (see applicant's justification, on file.)

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

No one spoke.

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

Kristen Hedden, 12949 Shelbyville Road, Louisville, KY 40243

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

Kristen Hedden, with Hagan properties, said that the location of the connection into their site as shown on the plan is a one-way street. She said that is not a cross-connection because traffic can only move one way. She asked if a binding element could be added to this plan stating that, if in the future something happens with the adjoining property, a connection could be added at that time, instead of right now.

Mr. Bardenwerper showed the connection on the site plan and an aerial photo. He said a binding element regarding building a future connection would be acceptable.

Commissioner Brown asked if there was already a binding element on the site requiring that cross-connection to be made when an adjoining site is developed. Ms. Hidden said there is, but the binding element states that it has to be "cross-connection"; currently, traffic leaving the applicant's site cannot make a left onto the Hagan property, but only a right turn into a one-way alley behind the store. This is an alley intended for delivery truck access; it was never intended to be a drive-through for regular vehicular traffic. Commissioner Proffitt asked if the drive-aisle into the side parking area is two-way. Ms. Hedden said it is, but the applicant is only showing access via the one-way lane. There was additional discussion about the traffic patterns through the parking area/s.

In response to a question from Commissioner Blake, Mr. Reverman and Mr. Bardenwerper said there is a standard binding element regarding cross-access already on the site, although it is not currently in the staff report. Mr. Bardenwerper said the applicant would agree to this standard binding element, which states that, in the event that the adjacent property is redeveloped, a cross-connection will be provided.

Mr. Bardenwerper showed elevations of the proposed building. He said that, at LD&T, the applicant was asked if they would accept a binding element limiting

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some uses on this property. Mr. Bardenwerper said they will, and the binding element is listed behind Tab 7 in the applicant's booklet (on file). It reads as follows:

*"C-2 uses of the property shall be limited to C-1 uses plus automotive repair except as may otherwise be approved by a committee of the Planning Commission taking into account the impact mitigation Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan."*

Commissioner Jarboe said that he did not understand how we can have a road that goes from new development into a parking lot. Mr. Bardenwerper discussed connectivity and possible future development, particularly as regards the church property.

Commissioner Brown said he felt the access/connection to the Hagan property should be made now. Ms. Hedden said she was one of the engineers who designed the Hagan development and that the access Commissioner Brown was referring to was designed to be wide enough for one vehicle only. That is why it is one-way traffic only. The drive aisle is 18-foot wide. Commissioner Proffitt said the access could be made two-way on the subject site, and kept one way on the Hagan property. Ms. Hedden said that still would not be a cross-access.

In response to a question from Commissioner Jarboe, Ms. Hedden said the one-way road turns right into employee parking.

In response to a question from Commissioner Blake, Mr. Reverman said he did not have exact measurements for the driveway behind the building on the Hagan property. He explained that, when the Hagan site was approved with its building closest to the subject site, there was a binding element added requiring cross-connectivity but there was nothing planned on the site that provided a good place for that connection. Commissioners Kirchdorfer and Brown briefly discussed the issue.

In response to a question from Commissioner Blake, Ms. Hedden pointed out the locations of a dumpster, an ILA, and the first parking stall on the Hagan site.

In response to a question from Commissioner Turner, Mr. Bardenwerper pointed out the location of a sidewalk and said that is in the public ROW.

Commissioner Kirchdorfer asked Mr. Bardenwerper if there is an elevation change between the subject site and the Hagan property. Mr. Bardenwerper said there is a four-foot elevation difference. Steve Scott, from Mindel Scott and

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Associates, discussed drainage. There is an existing detention basin on the park property; the intention is to take all the drainage from the subject site and channel it to that basin. MSD has reviewed this plan.

**Discussion:**

Commissioner Turner said he had heard this case at LD&T and felt that most concerns had been addressed. He would like to see the cross-access issue worked out. Commissioner Kirchdorfer also feels that the cross-access needs to be there and would like to see it on the plan. Commissioner Proffitt said he felt the property use is appropriate and is satisfied with the proposed binding element and the variance and waiver requests. Commissioner Brown said he would like to see the cross-connection made now; having a public road stub to the east would be ideal, but this is a small site and having an access easement would also be satisfactory for future extensions. He said he is also in support of the requested variance and waiver. Commissioner Jarboe agreed; but asked, at the time Hagan built its development, wasn't it supposed to have a place for a cross-access to be built? Commissioner Brown explained that mostly Metro Public Works waits until the adjacent site is going to be developed and then activates that requirement. Commissioner Tomes said he thinks the rezoning is appropriate. Commissioner Blake also spoke in support of the proposal.

Mr. Reverman read a proposed binding element into the record, as follows:

*"A connection to the north shall be provided at such time as made possible by redevelopment, or some other means, on the adjacent property."* (Note: This binding element was revised by Commissioner Brown during the motion to approve the Detailed District Development Plan. See binding element #9.)

Commissioner Tomes said these accesses should have been done at the time of the original plan. All of the Commissioners, Mr. Reverman, and Jonathan Baker (legal counsel for the Planning Commission) discussed the cross access and how to resolve this issue. Mr. Reverman said that there may not be a viable connection at this time from the Hagan site and suggested leaving the installation of a cross-access to the discretion of Metro Public Works.

**An audio recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to obtain a copy. The recording of this hearing will be found on the CD of the February 6, 2014 public hearing proceedings.**

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**Zoning and Form District**

On a motion by Commissioner Proffitt, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1 – Community Form. The Suburban Neighborhood Form still applies to the subject property best because the site adjoins other property located in the Suburban Neighborhood Form, and, this proposed small retail and auto care center rounds out this already existing activity center, which is neighborhood oriented; and

**WHEREAS**, the Commission further finds that the subject property lies adjacent to the south side of the Suburban Marketplace Corridor Form District that contains the Walgreens, a car wash and other restaurant and retail uses at the southeast corner of the intersection of Westport Road and N. Hurstbourne Parkway; because the Watkins United Methodist Church lies directly east of the subject property and extends from Westport Road to the southern boundary of the subject property to the south, that property is a natural boundary for delineating and limiting the width of the proposed corridor addition as it extends east from N. Hurstbourne Parkway, including the subject property as the final portion of that corridor; the State Park to the south provides a boundary along Hurstbourne Lane to the south; and the position of the subject property, as it is surrounded by a mixture of land use intensities (including the wide variety of uses mentioned above), and the potential for shared access with the existing commercial centers, make the proposed retail and auto care center an efficient and appropriate addition to the existing Suburban Neighborhood at this time; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 2 – Centers. The Intents and Policies of this Guideline are, among other things, "to promote efficient use of land and investment in existing infrastructure, to lower utility costs by reducing the need for extensions, to reduce commuting time and transportation-related air pollution, to provide an opportunity for neighborhood centers and marketplaces that include a diversity of goods and services and that are designed to be assets to the community, [and] to encourage vitality and a sense of place in neighborhoods and the community"; and

**WHEREAS**, the Commission further finds that the proposed retail and auto care center complies with the Intents of Guideline 2 because, as noted above, the center will improve the mix of land uses and diversity of services available at this

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highly desirable and convenient Suburban location proposed to change to a Marketplace form from a Neighborhood form; the retail and auto care center will promote shorter commute times for local residents, thereby reducing transportation-related air pollution that might be generated if required to travel a farther distance; and utilities are available along N. Hurstbourne Parkway, and the applicant will connect from this location, thus reducing public costs for infrastructure; and

**WHEREAS**, the Commission further finds that the proposed retail and auto care center complies with Policies 1, 2, and 3 of Guideline 2 because, as noted above, the subject property is located just south of the intersection of Hurstbourne Parkway and Westport Road and constitutes, at this location, the last commercial piece of the existing activity center currently hosting the many other varieties of commercial land uses described above; large residential neighborhoods exist off of Westport Road and Hurstbourne Parkway and for quite a distance beyond them in most directions, resulting in more than sufficient population to support the proposed retail and auto care center; and

**WHEREAS**, the Commission further finds that Policies 4, 5, 7, 8, 9-12 and 16 of Guideline 2 encourage a more compact development pattern with a mixture of land uses to ensure efficient traffic flow, fewer trips, sense of place and focal point, and the support of alternative modes of travel and multiple services which meet the day-to-day needs of nearby residents; the proposed retail and auto care center complies with these Policies of Guideline 2 because the subject property rounds out the southern end of this activity center, in a compact re-use location that will also serve as a transition between more intense land uses to the north and less intense civic uses to the south and west, and the even less intense residential areas beyond them; the central location and improved variety of services that the proposed retail and auto care center will support at this location will serve residents' day-to-day needs and ensure fewer trips as customers may stop at the center to accomplish multiple tasks rather than traveling farther distances to do so; and the applicant will provide sidewalk connections to and along N. Hurstbourne Parkway for better connectivity and to accommodate alternative modes of transportation; and

**WHEREAS**, the Commission further finds that Policies 13, 14, and 15 of Guideline 2 encourage the appropriate location of parking areas, connectivity, shared parking, access and use of existing infrastructure for purposes of roadways and utilities; the proposed retail and auto care center complies with these Policies of this Guideline because the parking areas are located in front of the proposed buildings and away from adjoining non-commercial properties to

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the east and south, thereby screening on-site activities from those properties and utilities are available by connection at this location; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 3 – Compatibility. The Intents and Policies of this Guideline are, among other things, "to allow a mixture of land uses and densities near each other as long as they are designed to be compatible with each other, to prohibit the location of sensitive land uses in areas where accepted standards . . . are violated or visual quality is significantly diminished (unless adequate abatement measures are provided), [and] to preserve the character of existing neighborhoods"; and

**WHEREAS**, the Commission further finds that Policies 1, 2, 4, and 20 of Guideline 3 seek to ensure that new development is compatible with the scale, design and pattern of existing development and applicants consider building materials, traffic, parking, and appropriate transitions between uses and neighborhoods that are organized around a center that may contain neighborhood-serving shops, schools, churches, and other uses at important intersections; the subject property lies at the major intersection of Westport Road and N. Hurstbourne Parkway where a significant neighborhood-serving 4-corner activity center already exists, consisting of retail shops, a Kroger grocery, a pharmacy, fast food restaurants, gas stations, offices, car wash, churches and school; the proposed retail and auto care center complies with the Intents and with Policies 1, 2, 4 and 20 of Guideline 3 because, as stated above, the proposed buildings will be small and one-story in scale, will feature building materials and a design style that will match the existing upscale commercial land uses nearby in order to enhance the better aspects of the larger community; buildings will be oriented toward N. Hurstbourne Parkway, with parking in front and well away from adjoining properties; the subject property will provide a transition between the more intense commercial land uses at the intersection proper and the civic land uses of school, church and park adjacent to the west, east and south of the subject property and the residential neighborhoods surrounding the activity center itself; and these land uses create a convenient and appropriate neighborhood hub and sense of place at this major intersection; and

**WHEREAS**, the Commission further finds that Policies 5, 6, 7, 8, and 9 of Guideline 3 seek to encourage mitigation of odor, air quality, traffic, noise, lighting, and visual impacts of new development; the proposed retail and auto care center, as described above, is oriented toward the activity center and away from adjoining properties to the east and south, and places parking so as to screening those activities from non-commercial uses; lighting will be directed

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down and away from adjoining properties and will meet Land Development Code requirements; the location of the proposed retail and auto care center along N. Hurstbourne Parkway, to Westport Road and the Gene Snyder Freeway, reduces commuting time for those accessing the retail and auto care center, thereby minimizing air quality issues related to longer vehicle trips or traffic delays that might be incurred if the center were located at a less convenient location; the impact of noise and retail and auto care center activities is reduced by virtue of the fact that activity is oriented toward the activity center, and all parking and entrance/exit activities will be along N. Hurstbourne Parkway, thus reducing noise and activity impact on other adjoining property owners; odor is mitigated by virtue of a contract for regular garbage removal; visually, the retail and auto care center building from N. Hurstbourne Parkway will be attractive, and the center has been set back in compliance with Parkway regulations; and the landscape buffer areas along the east and south property lines have been preserved and will be landscaped according to Code for good screening and transition; and

**WHEREAS**, the Commission further finds that Policy 12 of Guideline 3 seeks to ensure that new development is accessible to people with disabilities and the elderly; the proposed retail and auto care center will consist of two single-story buildings that will accommodate those who have difficulties with mobility; and the parking areas are directly in front of the buildings, thereby reducing the amount of distance to travel from a parking spot to the front door, and there are handicap parking spaces provided; and

**WHEREAS**, the Commission further finds that, in compliance with Policies 21, 22, 23, and 28 of Guideline 3 that require appropriate transitions, buffering and setbacks from adjoining land uses, this site will feature setbacks from N. Hurstbourne Parkway and the State Park; buildings have been oriented toward the activity center in order to minimize impact of parking and entrance/exit activities of customers on the adjoining property owners to the east and south; and this layout has been designed to ensure that the proposed retail and auto care center will blend with the surrounding properties and so that it creates no nuisance factors for this community; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guidelines 4 and 5 – Open Space and Natural Areas. The Intents and Policies of these Guidelines 4 and 5 are to ensure well-designed open space that meets community needs and to protect natural, scenic and historic resources; and

**WHEREAS**, the Commission further finds that the proposed retail and auto care center complies with the Intents of these Guidelines 4 and 5 inasmuch as the subject property consists of one narrow, in-fill parcel set among other various



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intensity land uses at the intersection of Westport Road and N. Hurstbourne Parkway next door to a large State Park; and the landscape plan for this center will ensure a positive aesthetic appearance for the property overall; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 6 – Economic Growth and Sustainability. The Intents and Policies of Guideline 6 seek to “ensure the availability of necessary usable land to facilitate commercial, industrial and residential development, [and] to reduce public and private costs for land development...”; and

**WHEREAS**, the Commission further finds that the proposed retail and auto care center will re-utilize available, highly accessible and convenient land that is in an in-fill location along the N. Hurstbourne Parkway corridor, near its intersection with Westport Road; and providing services to the nearby neighborhoods at this important intersection will allow residents to reduce commuting time to services located farther away; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guidelines 7, 8, 9, and 12 – Circulation, Transportation Facility Design, Alternative Modes of Transportation, and Air Quality. The Intents and Policies of these Guidelines 7, 8, 9 and 12 are to provide for safe and proper functioning of the street network that does not exceed carrying-capacity of streets, to promote efficient internal and external circulation of all new development, and to ensure transportation facilities that are safe, efficient with attention to air quality and which minimize impacts upon the community and that accommodate alternative modes of transportation and the needs of the elderly or handicapped; and

**WHEREAS**, the Commission further finds that the proximity of the subject property to area neighborhoods via Westport Road and Hurstbourne Parkway ensures that commuting time will be minimal, further reducing traffic related air quality impacts; sidewalks are provided along N. Hurstbourne Parkway to ensure accessibility by all modes of transportation including pedestrian, bicycle, and transit riders; transit service is available in the area; handicap parking spaces and safety crosswalks have been provided in accordance with the requirements of the Land Development Code; and the development plan received the preliminary stamp of approval from Metro Transportation Planning, thus demonstrating conformance with all standards governing access, site distances, internal circulation, and parking; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guidelines 10 and 11 – Stormwater and Water Quality. The Intents and Policies

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of these Guidelines 10 and 11 are to effectively manage stormwater and to prevent the degradation of water quality due to soil erosion; and

**WHEREAS**, the Commission further finds that the proposed retail and auto care center complies with the Intents and Policies of these Guidelines and with the requirements of MSD and the Land Development Code because there shall be no increase in drainage runoff to the N. Hurstbourne Parkway right-of-way and all drainage facilities shall conform to MSD requirements; no portion of the site is within the 100-year floodplain, and the overall plan received MSD's preliminary stamp of approval prior to docketing; and sanitary sewer service will be provided by connection; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 13 – Landscape Character. The Intents and Policies of this Guideline 13 are to protect and enhance landscape character by protecting woodlands and ensuring appropriate landscape design for different types of land uses; the Land Development Code includes minimum tree canopy requirements that will be met; and

**WHEREAS**, the Commission further finds that the proposed retail and auto care center complies with the Intents and Policies of this Guideline 13 because the landscape plan for the retail and auto care center was designed to include landscaping where required and along the Parkway setback for N. Hurstbourne Parkway; additional landscaping will be implemented via islands in the parking areas in accordance with the Land Development Code; these natural landscaping accents will be attractive and will also serve to reduce impacts of activities on adjoining properties; and the overall appearance of the retail and auto care center will reflect the character of the area and will ensure a positive aesthetic appearance for the center; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 14 – Infrastructure. The Intent and Policies of Guideline 14 seek to ensure that the carrying-capacity of the land is adequate for proposed development, with effective connections between land use patterns, and that those who proposed new development share in costs of public infrastructure; and

**WHEREAS**, utility and water services are available at the site, and the applicant will connect to these existing services; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented and the applicant's justification and findings of fact that all of

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the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore  
be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of Louisville Metro Government that the change in zoning from R-4 Single Family Residential to C-2 Commercial on property located at 2801 North Hurstbourne Parkway, as described in the attached legal description, be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: No one.**

**Variance of table 5.3.2 of the Land Development Code to allow the proposed buildings to exceed the maximum 80 ft setback along N Hurstbourne Pkwy as shown on the development plan.**

On a motion by Commissioner Proffitt, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare since the proposal provides the required 30 ft parkway buffer along N Hurstbourne Pkwy, which is compatible with current and future development in the area, while providing for safe access to the site for motorists and pedestrians; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the proposal provides the required 30 ft parkway buffer along N Hurstbourne Pkwy, which is compatible with current and future development in the area; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the proposal provides the required 30 ft parkway buffer along N Hurstbourne Pkwy, which is compatible with current and future development in the area, while providing for safe access to the site for motorists and pedestrians; and

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**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the proposal provides the required 30 ft parkway buffer along N Hurstbourne Pkwy, which is compatible with current and future development in the area, while providing for safe access to the site for motorists and pedestrians; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the site is located on a designated parkway with a required 30 ft buffer and setback; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the site is located on a designated parkway with a required 30 ft buffer and setback, making compliance with the maximum setback requirement difficult; and

**WHEREAS**, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore  
be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance of Variance of table 5.3.2 of the Land Development Code to allow the proposed buildings to exceed the maximum 80 ft setback along N Hurstbourne Pkwy as shown on the development plan.

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: No one.**

**Detailed District Development Plan**

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On a motion by Commissioner Proffitt, the following resolution was adopted:

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee (and to the City of Lyndon, St. Matthews, Hurstbourne, or Middletown) 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 and site disturbance) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, 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.

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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 depicted in the rendering as presented at the February 6, 2014 Planning Commission meeting.
8. C-2 uses of the property shall be limited to C-1 uses plus automotive repair except as may otherwise be approved by a committee of the Planning Commission taking into account the impact mitigation Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.  
*Applicant's binding element added at 02/06/14 Planning Commission meeting*
9. Vehicular and pedestrian connection to the adjacent property to the north shall be provided as a condition of the construction approval on the subject site at the location as shown on the development plan. If connection is not practical due to the site constraints and/or grade or topography, as determined by Metro Transportation Planning, future connections shall be made upon redevelopment of the abutting property to the north.  
*Binding element revised by Commissioner Brown at 02/06/14 Planning Commission meeting*

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, and Turner.**

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**NO: No one.**

**NOT PRESENT: Commissioners Hughes, White, and Peterson.**

**ABSTAINING: No one.**

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**Case No. 13SUBDIV1000**

**\*NOTE: Commissioner Blake recused himself from this case.**

**Project Name:** Glenmary Conservation Subdivision

**Location:** 10200 Glenmary Farm Drive

**Owner/Applicant:** Par Golf, LLC  
Maria Purcell, Representative  
10200 Glenmary Farm Drive  
Louisville, KY 40291

**Representative:** William Bardenwerper  
Bardenwerper, Talbott & Roberts PLLC  
1000 North Hurstbourne Parkway Suite 200  
Louisville, KY 40223

**Architect/Engineer:** David Mindel  
Mindel, Scott & Associates  
5151 Jefferson Boulevard  
Louisville, KY 40219

**Jurisdiction:** Louisville Metro  
**Council District:** 22 – Robin Engel

**Case Manager:** **Julia Williams, AICP, Planner II**

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

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

**Request:**

Conservation Subdivision and Amendment to a Record Plat.

**Agency Testimony:**



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Before staff presented the case, Commissioner Blake recused himself from this case and Vice-Chair David Proffitt assumed Chairmanship of the meeting.

Commissioner Proffitt explained that the Mayor's Gallery, where this meeting was being held, was reserved after 4:00 p.m. and that this and the remainder of the cases scheduled for today would have to be **continued** to February 20, 2014 at 1:00 p.m. at the Central Government Center, located at 7201 Outer Loop. Testimony will be taken today for this case.

Julia Williams presented the case and showed a Power Point presentation, which included maps and photos of the site and surrounding areas (see staff report and audio recording for detailed presentation.) She added that there are three minor plats to be presented after this case (Case Nos. 19173, 19174, and 19219.) She discussed notice that was given for this case. She said 1<sup>st</sup> and 2<sup>nd</sup> tier adjacent property owners within 500 feet of the proposal as well as all other property owners within the Glenmary Subdivision, the Glenmary Homeowners Association, and whomever was noticed for the above mentioned minor plats that were not already listed as 1<sup>st</sup> or 2<sup>nd</sup> tier or within 500 feet of the proposal were noticed for the conservation subdivision and record plat amendment.

Commissioner Proffitt asked if the historic areas of the site were part of the original development plan, and had been proposed to remain. Ms. Williams said yes, and that the historic buildings/areas had been proposed to remain.

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

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway Suite 200, Louisville, KY 40223

David Mindel and Kathy Linares, Mindel, Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

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

Williams Bardenwerper, the applicant's representative, showed the applicant's Power Point presentation and exhibits (on file.) He introduced David Mindel and said he was the designer of the conservation subdivision, and was also the one who selected the locations of the three minor-platted lots associated with this case. He discussed "ministerial reviews" and the procedures for amending record plats. He said the appropriate forum for discussing deed restrictions is in court, and read regulations from the Comprehensive Plan that apply to amending

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record plats. He said the Comprehensive Plan only applies to drafting of regulations, and discretionary issues like rezoning and Conditional Use Permits.

Mr. Bardenwerper explained some of the history of the request and said this request from the Purcells (golf course owners) came about because they were "trying to keep the golf course alive" as a business, and also because it is a natural amenity. He said the Purcells approached 20<sup>th</sup> Century Parks and Metro Parks and they were not able to take over the land. There was a contract that was approved by the Board of Directors of the subdivision to buy the club, but that contract to purchase was terminated by the new Board of Directors. He said the applicant has offered three times to renew that contract, including reducing the purchase price, but all three contracts were turned down. He said subdividing into these plots is the only way to prevent the golf course from closing.

David Mindel, one of the applicant's representatives, showed the proposed minor plats and explained how the area that is affected fits in to the total development of Glenmary. There is a large area of golf course that will not be affected. He said there were three lots in three areas where new homes would not be too close to the greens/holes, etc. He explained how sewer lines could be extended to tie in to the new lots. He discussed tree stands that would be preserved to protect the viewshed from the road. He said the barn was very dilapidated and that "a good windstorm would probably demolish that barn." The applicant does want to save the existing pool, which they consider an amenity, but parking could be a problem for people using the pool.

Mr. Bardenwerper discussed the conservation subdivision plan. Kathy Linares referred to some of the slides in Mr. Bardenwerper's Power Point presentation and showed a larger view of the proposed conservation subdivision. She said the reasons why the cul-de-sac did not come back into Black Iron Road was the privacy issue, and also the applicant was trying to preserve some of the existing greenspace around the clubhouse. She addressed some concerns about some of the larger trees, particularly those around Black Iron Road. She said some of those existing trees are damaged and had to be removed. To help protect the views from some of the existing residences, she said the applicant would agree to a Condition of Approval (affecting Lots 17-28 and possibly Lots 1-3) to provide some additional screening along the rear of some of those yards.

Mr. Bardenwerper concluded his remarks and reiterated that the historic clubhouse and the pool will be retained.

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**Public Hearing**

**Case No. 13SUBDIV1000**

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

Donald L. Cox, 500 West Jefferson Street, Louisville, KY 40202

Philip J. Reverman Jr., 10304 Colonel Hancock Drive, Louisville, KY 40291

James Brooks, 10401 Black Iron Road, Louisville, KY 40291

Richard Bieniek, 10313 Long Barn Court, Louisville, KY 40291

Peggy Murray, 8017 Cedar Glen Lane, Louisville, KY 40291

Ron Huff, 10402 Colonel Hancock Drive, Louisville, KY 40291

Robert Thompson, 10303 Colonel Hancock Drive, Louisville, KY 40291

Gary Flynn, 8012 Cedar Glen Lane, Louisville, KY 40291

Norman Stevens, 10602 Glenmary Farm Drive, Louisville, KY 40291

Robert Ford, 10702 Briar Turn Drive, Louisville, KY 40291

Kenneth R. Roush, 10210 Glenmary Farm Drive, Louisville, KY 40291

Sharon and Jeff Dreher, 7709 Hall Farm Drive, Louisville, KY 40291

Terri French, 9903 Red Run Court, Louisville, KY 40291

Art and Vicky Klein, 10002 Plum Hollow Court, Louisville, KY 40291

Al Birch, 10610 Black Iron Road, Louisville, KY 40291

Cosma and Joseph O'Bryan, 10707 Briar Turn Drive, Louisville, KY 40291

T. L. Warren, 7900 Glenmary Farm Court, Louisville, KY 40291

Robert Beard, 7903 Glenmary Farm Court, Louisville, KY 40291

Dennis Lilly, 10413 Glenmary Farm Drive, Louisville, KY 40291

Mike Young, 10509 Glenmary Farm Drive, Louisville, KY 40291

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**Case No. 13SUBDIV1000**

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

Donald Cox said he wanted to make a "jurisdictional point" that the Land Development Code does not apply to this proceeding because this is a 1988 subdivision. Quoting Section 7.1.9 of the Land Development Code, he said the provisions of the Land Development Code shall apply to subdivisions filed on or after March 1, 2003. He said the Planning Commission has no authority to amend plats that were adopted 25 years ago. He said this is about a contract between homebuyers and the developer, who he said used open space and the golf course as the main selling point for these homes. He said these contractual obligations run with the land, and the developer is trying to re-write the contract.

Mr. Cox said Section 19 of the Kentucky Bill of Rights states that "no ex-post-facto law nor any law incurring the obligation of contract shall be enacted." He said this is what the applicant is asking the Planning Commission to do. He said the Planning Commission is bound by the Kentucky Constitution and cannot act against the Bill of Rights.

Mr. Cox said the barn should be preserved, not demolished. Regarding the contract to purchase the clubhouse, he said the contract was terminated because "there were serious questions" about the contract. He said Mr. Bardenwerper discussed "amenities", but he said the main amenity is all of the open space. Buyer's agreed to buy due to the open space, not to have a view of someone else's back yard.

Mr. Cox stated that Mr. Bardenwerper has an interest in getting this done because he "has a mortgage on this property; the only way he gets paid is if these lots get sold." He submitted copies of the plats and the restrictions into the record (all submittals on file.)

***\*NOTE:** Commissioner Proffitt interjected to announce that the continuation of this hearing would be at 1:00 p.m. on February 20, 2014 at the Central Government Center, 7201 Outer Loop. Commissioner Tomes noted that there will not be any additional notice sent out, because this will be a **continuation** of today's hearing.*

Mike Young said that, when he purchased his house in 1998, the house was on the golf course. He said he made a point at that time to ask a real estate agent about the golf course and making sure it was going to stay there. The agent brought out the plat and pointed out the note on the plat which stated that the

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**Case No. 13SUBDIV1000**

property was "not to be subdivided". The agent told him that this was filed with the City and was final, that "no one could ever change that."

Dennis Lilly said that, when he bought his lot, he was told that this was greenspace and would always remain greenspace. He said he believes that subdividing the property would affect his property values.

Robert Beard said he "paid a premium" for his lot that is on the golf course, and he also bought his lot because it was on the course and he was told that it would remain greenspace.

T. L. Warren was called but declined to speak.

Joseph O'Bryan said he was opposed to the proposal.

Cosma O'Bryan was called but declined to speak.

Art Klein was called but declined to speak.

Al Birch said he was opposed because he feels that selling a few lots may help Par Golf out of their immediate financial issues but will not help in the long run, and may require the sale of more and more of the property.

Jeff Dreher was called but declined to speak.

Vicky Klein said she is one of the newest residents in the patio home section, the residents of which are primarily retirees. She said this proposal brought to the homeowners did not take fixed-income residents into account and she is upset because she is being asked to pay for this golf course whether she wants it or not. She said she voted against this purchase because she cannot afford it.

Terri French was called but declined to speak.

Sharon Dreher said she was one of the new Board members that got elected after the contract. She said that, if the deed restrictions are removed, that "anything is possible" and she is against the proposal.

Kenneth Roush was called but declined to speak.

Robert Ford was called but declined to speak.

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Norman Stevens was called but declined to speak.

Gary Flynn was called but had left earlier.

Robert Thompson said that he is the Vice-President of the homeowner's association. He said also said that he chose his premium lot based on the location and view, and under the assurances of the real estate agent that a 75% vote by all the residents of his section would be required to change the deed restrictions. He said he also strongly opposed any changes to the deed restrictions.

Ron Huff said he is the current President of the homeowner's association, and was also on the previous Board that voted to purchase the golf course. He said that, at that time, he advised the Board that it took a 75% vote from the residents, per the deed restrictions, to lift the restriction on that land to allow any development or to purchase the property. He said he does not believe that proper notice was given for this public hearing and says notice did not go out to all of the residents, just the first- and second-tier residents. He said the Board sent out notices to other residents for whom they had e-mail addresses. He said one of the reasons he is opposed to this proposal is because of the historic value and development would destroy that historic value. He said he believes the course is in poor shape due to mismanagement and that membership has greatly decreased since the new owners took over.

Peggy Murray she lives on Lot 312. She said there is between 10-20 feet between her deck and the edge of where these new properties would be behind her home. She questioned whether there would be enough space for a treeline to buffer her property. She discussed notice/s and correspondence she had received about this issue, and said she first heard at the neighborhood meeting about the three plats being included in the conservation subdivision. Ms. Murray said she was told at a meeting that the conservation subdivision had already been approved. Julia Williams said there was one minor plat that was associated in the area of the conservation subdivision; the properties have not been platted off yet, which is why they are being presented today. She said this case is not "a done deal", but she had expressed to Ms. Murray that this is a ministerial review, not a discretionary review. There is no discretion or standard of review for the Planning Commission to act upon/adjust the plan; if the proposal meets the Land Development Code requirements, then it is approvable. However, the applicant has also requested amending a record plat (three pages for one record plat.) In response to a question from Commissioner Proffitt, Ms. Williams said proper notice had been given.

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In response to Ms. Murray's questions, Commissioner Proffitt said that nothing has been approved yet. He added that the Planning Commission is only here to decide if the original record plat can be changed.

Jonathan Baker, legal counsel for the Planning Commission, asked Ms. Williams if the conservation subdivision plan comes after the initial request to amend the record plat. Ms. Williams said the three minor plats came in, which went to DRC; then she received the conservation subdivision plan. The minor plats came in to create three individual lots on three different areas of the Glenmary subdivision. Ms. Murray said that, although the three plats have been presented to the residents as buildable lots, they appeared to her as if they were going to be accesses, specifically the plat for Case No. 19173. Mr. Baker recommended that Ms. Murray get together with Ms. Williams and Matthew Doyle, the Case Manager for Case Nos. 19173, 19174, and 19219, to discuss specifics of the requests.

Ms. Williams clarified that there are four requests: three minor plats, one conservation subdivision, and then an overall amendment to record plat.

Philip Reverman said the plat in the staff report for Case No. 19174 references an area right next to his property. He said there is no way a house can be built on that lot. He said that, in his opinion, this lot looks like an access route to develop the rest of the golf course property.

James Brooks said his property is adjacent to the lot referenced under Case No. 19173. He said he bought his house from the original owner/builder, who explained that the lot next door would always been recreational and is built at an angle from the street. He said that he also was told when he bought his house that the adjacent property would stay as it was.

Richard Bieniek showed a copy of his original deed of purchase showing the property affected by the minor plat requests labeled as "recreation area". He said there is one road going in to the currently-developed area, with 9 or 10 houses facing the street, with driveways. If these new lots are going to be patio homes, they are going to have small garages and will probably bring more traffic onto the road "which will ruin the neighborhood." All of the current homes are rear-entry, with cars off the street. He also discussed the old barn, which he said Par Golf uses to store their golf carts – where will the carts be stored if the barn is removed? There is nothing shown on any plan which addresses this.

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

No one spoke.

**Rebuttal:**

There was no rebuttal at this time.

**A recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the February 6, 2014 public hearing proceedings.**

**The Commission by general consensus agreed to CONTINUE this case to the February 20, 2014 Planning Commission public hearing.**



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**Public Hearing**

**Case No. 19173**

**Project Name:** Par Golf Minor Plat

**Location:** 10200 Glenmary Farm Drive

**Owner/Applicant:** Par Golf, LLC  
Maria Purcell, Representative  
10200 Glenmary Farm Drive  
Louisville, KY 40291

**Representative:** William Bardenwerper  
Bardenwerper, Talbott & Roberts PLLC  
1000 North Hurstbourne Parkway Suite 200  
Louisville, KY 40223

**Architect/Engineer:** David Mindel  
Mindel, Scott & Associates  
5151 Jefferson Boulevard  
Louisville, KY 40219

**Jurisdiction:** Louisville Metro  
**Council District:** 22 – Robin Engel

**Case Manager:** **Matthew R. Doyle, Planner I**

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.)

**Request:**  
Amendment to Record Plat

**No testimony was taken.**

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**Public Hearing**

**Case No. 19173**

**The Commission by general consensus agreed to CONTINUE this case to the February 20, 2014 Planning Commission public hearing.**

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**Public Hearing**

**Case No. 19174**

**Project Name:** Par Golf Minor Plat

**Location:** Parcel 2580-0437-0000 (Colonel Hancock Drive)

**Owner/Applicant:** Par Golf, LLC  
Maria Purcell, Representative  
10200 Glenmary Farm Drive  
Louisville, KY 40291

**Representative:** William Bardenwerper  
Bardenwerper, Talbott & Roberts PLLC  
1000 North Hurstbourne Parkway Suite 200  
Louisville, KY 40223

**Architect/Engineer:** David Mindel  
Mindel, Scott & Associates  
5151 Jefferson Boulevard  
Louisville, KY 40219

**Jurisdiction:** Louisville Metro  
**Council District:** 22 – Robin Engel

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**Request:**

Amendment to Record Plat

**No testimony was taken.**

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**Case No. 19174**

**The Commission by general consensus agreed to CONTINUE this case to the February 20, 2014 Planning Commission public hearing.**

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**Public Hearing**

**Case No. 19219**

**Project Name:** Par Golf Minor Plat

**Location:** Parcel 2535-000A-0000 (Colonel Hancock Drive)

**Owner/Applicant:** Par Golf, LLC  
Maria Purcell, Representative  
10200 Glenmary Farm Drive  
Louisville, KY 40291

**Representative:** William Bardenwerper  
Bardenwerper, Talbott & Roberts PLLC  
1000 North Hurstbourne Parkway Suite 200  
Louisville, KY 40223

**Architect/Engineer:** David Mindel  
Mindel, Scott & Associates  
5151 Jefferson Boulevard  
Louisville, KY 40219

**Jurisdiction:** Louisville Metro  
**Council District:** 22 – Robin Engel

**Case Manager:** **Matthew R. Doyle, Planner I**

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.)

**Request:**

Amendment to Record Plat

**No testimony was taken.**

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**Public Hearing**

**Case No. 19219**

**The Commission by general consensus agreed to CONTINUE this case to the February 20, 2014 Planning Commission public hearing.**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Legal Review Committee**

No report given.

**Planning Committee**

No report given.

**Policy and Procedures Committee**

No report given

**Site Inspection Committee**

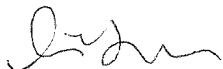
No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 4:30 p.m.

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**Chairman**



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**Division Director**

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