

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
September 18, 2014**

A meeting of the Louisville Metro Planning Commission was held on September 18, 2014 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Commission members present:**

Donnie Blake, Chair  
David Proffitt, Vice-Chair  
Jeffrey Brown  
Carrie Butler  
Vince Jarboe  
Lloyd "Chip" White  
Clifford Turner  
Robert Kirchdorfer  
David Tomes  
Robert Peterson

**Commission members absent:**

No one

**Staff Members present:**

Joseph Reverman, Planning Manager  
Christopher Brown, Planner II  
Julia Williams, Planner II  
David Wagner, Planner II  
John Carroll, Legal Counsel  
Jon Baker, Legal Counsel  
Sharonda Duerson, Management Assistant (minutes)

The following matters were considered:

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**APPROVAL OF MINUTES**

**SEPTEMBER 4, 2014 PLANNING COMMISSION REGULAR MEETING MINUTES**

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

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on September 4, 2014.

**The vote was as follows:**

**YES: Commissioners Brown, Butler, Turner, Jarboe, Tomes, Peterson and Proffitt**

**NO: No one**

**NOT PRESENT FOR THIS CASE: No one**

**ABSTAINING: Commissioners Blake, Kirchdorfer and White**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

**Project Name:** The Post Restaurant and Bar

**Location:** 1045 Goss Avenue

**Owner:** TenFifty Eight, LLC  
Laura Neely, Representative  
1058 Highland Avenue  
Louisville, KY 40204

**Applicant:** TenFifty Eight, LLC  
Laura Neely, Representative  
1058 Highland Avenue  
Louisville, KY 40204

**Representatives:** TenFifty Eight, LLC  
Laura Neely, Representative  
1058 Highland Avenue  
Louisville, KY 40204

**Engineer/Designer:** Pickett Passafiume Architects  
2538 Carolina Avenue  
Louisville, KY 40205

**Jurisdiction:** Louisville Metro

**Council District:** 10-Jim King

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

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 C-1 to C-2, Variance to encroach into the front yard setback

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

**Agency Testimony:**

00:06:58 Julia Williams discussed the case summary, standard of review and staff analysis from the staff report.

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

Laura Neely, 1058 Highland Avenue, Louisville, KY 40204  
Mike Morris, 947 Goss Avenue, Louisville, KY 40217

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

00:12:24 Mike Morris, President of the Schnitzelberg Community Council stated that he and the neighborhood supports the zoning change and the variance that is being requested. He also stated that Steve Magre, President of the Germantown-Paristown Neighborhood Association is also in support of the requesting change.

00:13:32 Laura Neely handed out letters of support from the Schnitzelberg & Germantown neighborhood.  
Commissioner Kirchdorfer asked about the hours of operation and Ms. Neely said that they will be open from 4pm until 2am and that is per the binding elements that are attached to the zoning, however, they will not be selling alcohol past 2am outdoors.

Commissioner White asked Ms. Neely about the construction of the development. She stated that the property has had extensive renovations and hopes to be open mid-November.

Julia Williams explained to the Commissioners that Binding Elements 9 & 10 were added by the applicant in a compromise with the neighborhood.

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

No one spoke in opposition of this case.

**Deliberation**

00:18:42 Planning Commission deliberation. The Commission expressed no concerns on this case.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

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

**Zoning Change from ~~C-1 to C-2~~**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal complies with Guideline 1 of Cornerstone 2020. The proposal does not interfere with the current layout of streets, alleys, or sidewalks. The proposal is located in an existing commercial node that includes a mix of uses. C-2 permits other commercial uses that are currently permitted in the area. The proposal is located in an existing commercial and residential area. The proposal will not affect public open space in the area. The proposal is for the preservation/renovation of an existing structure that is generally consistent with the overall look of the adjacent neighborhood.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 2 of Cornerstone 2020. The proposal will not create a new center. The proposal is mainly the reuse of an existing structure for commercial use. The area surrounding the site has sufficient population to support C-2 zoning and all of its permitted uses as the proposal is located in an urban neighborhood. The proposal is for a small lot within an existing commercial node. No additional infrastructure is necessary with this proposal. The proposal is in a center where commercial has existed for some time. It is adjacent to compatible high density and intensity zoning. The proposal is for one use in an existing structure. The parking is existing. There is an existing curb cut that connects Goss to the alley to the rear. The proposal is utilizing existing utilities for the development. Pedestrians have access through the public sidewalk. Bicycles access the site as any other vehicle. Bike racks are provided.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 3 of Cornerstone 2020. No new building is proposed. Because the site is adjacent to existing C-1 zoning. The proposal is not a non-residential expansion into an existing residential area. Traffic will not be adversely impacted by the proposal. The proposal is for a high intensity commercial zoning district not located along a transit corridor but is located in an existing activity node where a commercial use has been present in the structure for some time. The surrounding properties are all commercially zoned or are a ROW. Buffer yards are not required between the similarly used sites. The building and parking are existing and will not affect the established setback in the area. The proposal shows a deck along the frontage of the site which will bring the use closer to the sidewalk. Parking is existing and will not further impact the area. The parking is existing and does not require screening and buffering.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

The signage will be attached to the building and meet form district requirements.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 4 of Cornerstone 2020. Open space is provided in the form of the proposed deck. The open space here will both provide a space for patrons of the business to gather but also for the patrons to watch the street. The proposal is not located in an area where there are natural features evident.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 6 of Cornerstone 2020. Access is not an issue with the proposal. The proposed C-2 zoning will be located in an existing activity node that has been present in the neighborhood for some time.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 7 of Cornerstone 2020. Roadway improvements are not necessary for the proposal. The existing facilities around the site promote alternate transportation. No new roads are proposed. Access will be from existing streets. Dedication of ROW is not necessary with the proposal. Adequate parking is proposed. Cross access is not necessary due to the lot depths and having alley access.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 8 of Cornerstone 2020. No new roads are proposed. Access will be from existing streets. Access to the development is by public roadways.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 9 of Cornerstone 2020. The existing facilities around the site promote alternate transportation.

**WHEREAS**, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 14 of Cornerstone 2020. Existing utilities will serve the site. The proposal is located in an area with adequate water supply. The health department has approved the proposal.

**WHEREAS**, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and findings of fact, that the proposal meets all other applicable Guidelines of Cornerstone 2020; now, therefore be it;

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested Change in zoning from C-1, Commercial to C-2, Commercial on property described in the attached legal description be **APPROVED**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Variance**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The deck encroachment will not adversely affect the public health, safety, or welfare as the deck brings the use closer to the street which is consistent with other commercial uses within the area.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The deck encroachment will not alter the character of the neighborhood as the deck brings the use closer to the street which is consistent with other commercial uses within the area.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The variance will not be a nuisance to the public because the deck is located at the front of the property where there is an existing minor arterial.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The variance is not unreasonable as the deck will be consistent with other outdoor dining areas in the Goss Avenue corridor and within the neighborhood.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The variance arises from the infill standards and exceptions within Chapter 5 which applies to the land in the area but not all the land because not all of the properties in the area have a standard consistent block face.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The provisions would deprive the applicant of reasonable use of the land as this particular area of Goss Avenue has a mix of setbacks before the residential portion of the block face begins and becomes more consistent.

**WHEREAS**, the Louisville Metro Planning Commission further finds, Since the applicant is renovating an existing building and the only new construction will be the deck, the result of the variance has little to do with actions taken before the adoption of the zoning

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

regulations because the building was constructed before zoning regulations. The applicant had no control over the building location and the front yard is the only logical place for outdoor dining given some of the residential located in the area.

**WHEREAS**, the Louisville Metro Planning Commission finds that, based on the evidence and testimony presented, the staff report, 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**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.2.2.C.1 to permit 10 foot of encroachment of a deck into the 25 foot front yard setback for a 10 foot variance.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**District Development Plan and Binding Elements**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposal renovates a historic site that is considered a contributing structure if the neighborhood were to ever seek a National Register status for which it is eligible.

**WHEREAS**, the Louisville Metro Planning Commission further finds, Both vehicles and pedestrians are provided for with the proposal. An existing public sidewalk exists as well as a parking lot with sufficient parking.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The open space on the site is in the form of the deck. The front deck meets the needs of the proposal as well as providing a watch over the street within the neighborhood.

**WHEREAS**, the Louisville Metro Planning Commission further finds, MSD has preliminarily approved the proposal.



**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

**WHEREAS**, the Louisville Metro Planning Commission further finds, With the exception of the front deck the features on the site are existing. The deck is compatible with the surrounding commercial uses as it pushes the proposed use closer to the road which is consistent with some of the other commercial buildings in the area.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposal complies with the LDC and Comprehensive Plan.

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

**Binding Elements**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 2,900 square feet of gross floor area.
3. No small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 13ZONE1022**

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

8. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
9. The following uses shall not be permitted on site: boarding and lodging houses, community residences, community service facility, day care centers, nurseries, kindergartens, extended stay lodging, pawn shop, residential care facilities, transitional housing, homeless shelter, and fraternities and sororities. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. A committee of the Planning Commission may require a public hearing on the request to amend this binding element.
10. No outdoor consumption of alcohol on the site past 2 am.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**Request:** Change in Zoning from R-4, Single Family Residential and C-1, Commercial to C-1, Commercial, Detailed District Development Plan and Binding Elements, Variances, and Waivers

**Project Name:** Thomas Car Wash

**Location:** 6511 Preston Highway

**Owner:** PNC Bank National Association

**Applicant:** Eli and Alex Thomas

**Representative:** Wyatt, Tarrant & Combs, LLP  
500 W. Jefferson Street, Suite 2800

Land Design & Development, Inc.  
503 Washburn Avenue

**Jurisdiction:** Louisville Metro

**Council District:** 2-Barbara Shanklin

**Staff Case Manager:** David B. Wagner, Planner II

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

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

**Agency Testimony:**

00:21:45 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

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

Cliff Ashburner, 500 W. Jefferson Street, Suite 2800, Louisville, KY 40202

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

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

00:31:21 Mr. Ashburner gave a power point presentation of the proposed development. He also stated that agreed with the staff report that was presented and would like to have the request approved.

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

No one spoke in opposition of this case.

**Deliberation**

00:37:42 Planning Commission deliberation. Commissioners had no concerns about this development and supported what was presented at the hearing.

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

**Zoning Change from R-4 to C-1**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposed redevelopment complies with the Cornerstone 2020 Comprehensive Plan and with all of the applicable Guidelines and Policies it contains. The subject property is surrounded by commercial uses, including a gas station/convenience store with a drive through car wash, an adult store, truck dealership and office buildings. That the subject property remains zoned, even in part, residential, is a curiosity. The proposed redevelopment will use the existing access points on Fern Valley Road and Preston Highway. The proposed redevelopment will remove the existing bank buildings and replace them with a drive through car wash building and coverings for vacuum spaces just to the south of the building (and behind the existing gas station and adult store).

**WHEREAS**, the Louisville Metro Planning Commission further finds The proposed redevelopment complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan. The subject property is located in the Suburban Marketplace Corridor Form District, a form district located along major roadways with a mixture of medium to high intensity uses. Redevelopment is encouraged, as the applicant is proposing.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with Guideline 2 and with its Policies. The proposed redevelopment is in an activity center at the corner of Fern Valley Road and Preston Highway, one of the more intensely developed commercial areas in the community. The proposed redevelopment is compact in scale and uses existing access points and infrastructure. The proposed redevelopment will use existing utilities. The subject property is also served by a nearby TARC stop.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with Guideline 3 and its Policies. The proposed redevelopment is similar in scale to the nearby existing commercial uses. The proposed redevelopment should have no adverse impact on adjacent properties through any additional odor, noise or lighting. The proposed redevelopment should also compliment the adjacent auto-centric uses, including the gas station and truck dealerships to the south and north of the subject property, respectively. The applicant is seeking a waiver of certain landscaping requirements to the south because portions of those two properties are zoned R-4 Single-Family Residential in spite of their intense commercial use.

**WHEREAS**, the Louisville Metro Planning Commission further finds, There is virtually no open space on the subject property, nor are there any identified scenic or historic resources. The proposed redevelopment will, however, comply with these Guidelines. The proposed redevelopment will decrease the amount of impervious surface existing on the subject property by approximately 9,000 square feet and will comply with the tree canopy regulation.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with Guideline 6 and its Policies. The proposed redevelopment will replace a shuttered bank branch with a car wash using the existing infrastructure and bringing the subject property more into compliance with the current Land Development Code.

**WHEREAS**, the Louisville Metro Planning Commission further finds The proposed redevelopment complies with these Guidelines and their Policies. The proposed redevelopment will use the existing access points on Fern Valley Road and Preston Highway but will limit access on Preston Highway to right-in/right-out to ensure safe traffic circulation. The applicant has also identified possible locations for future connections to adjoining properties. The proposed redevelopment will also respect the Fern Valley Road parkway buffer requirement. Right of way dedication has not been requested.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment is an auto-centric use but complies with this Guideline and its Policies. The proposed redevelopment is adjacent to a property that hosts a TARC stop, will provide both short- and long-term bicycle parking and will provide safe cross-walks at its entrances on Fern Valley Road and Preston Highway.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with these Guidelines and their Policies. The proposed redevelopment will reduce the existing impervious surface on the subject property by approximately 9,000 square feet and will provide tree canopy where none exists today. Both of these factors should improve the ability of the subject property to absorb stormwater and to improve water quality. The proposed redevelopment will connect to the existing storm sewer in the area. The applicant will comply with all MSD requirements during and after construction.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with this Guideline and its Policies. The proposed redevelopment will use existing infrastructure, will provide bike parking and will provide trees where there are none.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with this Guideline and its Policies. The proposed redevelopment will provide approximately 9,000 square feet of green space that does not exist today . The waiver requested from the landscape buffer requirements is due to the fact that the commercially-used properties to the south are partially zoned R-4 Single Family Residential.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested Change in zoning from R-4, Single Family Residential, to C-1, Commercial on property described in the attached legal description be **APPROVED**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Comment [LMG1]:** Incomplete

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**Variance**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposed redevelopment requires a 25' yard adjacent to the R-4 Single-Family Residential zoned portions of the adjacent properties to the south. Neither of these properties are used residentially, meaning a reduction in the required yard will not adversely affect the public health, safety or welfare .

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed variance will not alter the essential character of the general vicinity because it will allow the existing yards (none) to remain. And the area of the variance is to the rear of the buildings that face Fern Valley Road and Preston Highway.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed variance will not cause a hazard or nuisance to the public because it will allow for the existing yards to remain and will allow for adequate access to the proposed redevelopment.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed variance will not allow an unreasonable circumvention of the requirements of the zoning regulation but will instead allow for the subject property to be redeveloped in spite of what must be mistaken zoning lines and/or land uses on the properties to the south of the subject property.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The variance arises from special circumstances that do not apply to other properties in the area. Rarely are residentially-zoned properties used commercially as the subject property and the adjacent properties to the south have been.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The strict application of the regulation will deprive the applicant of the reasonable use of the subject property. The R-4 Single-Family Residential district has no place on the subject property or the adjacent properties to the south. Mandating a 25' buffer area be created because of the incorrect zoning of the properties to the south would create an unreasonable burden on the applicant.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**WHEREAS**, the Louisville Metro Planning Commission further finds, The circumstances are not the result of actions the applicant has taken but are the result of an error either in the drawing of the zoning boundary or in the permitting of commercial uses on the subject properties for as many years as have passed since these properties began being so used.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **APPROVE** the **VARIANCE** of Land Development Code Section 5.3.2.C.2.b to allow the required 25' side yard setback to be 0' along the adjacent property zoned R-4.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Waiver of LDC Section 10.2.4 to waive the required 25' Landscape Buffer Area along the adjacent property zoned R-4.**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposed redevelopment contains buffers as required adjacent to all of the commercially used and zoned properties that border it. Curiously, portions of the subject property and the properties to the south, while used commercially for many years, are zoned R-4 Single-Family Residential, triggering buffer requirements under LDC 10.2.4.A. The applicant is seeking to waive the required buffer due to the commercial use of the properties to the south of the subject property.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The waiver will not adversely affect adjoining property owners. There is no landscaping in the area of the



**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

request now and no buffer would be required if the zoning and use of the adjoining properties were consistent.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The waiver will not violate the Comprehensive Plan for the reasons mentioned above.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The extent of the waiver is the minimum necessary to afford relief to the applicant. The applicant is proposing to provide buffers where required and is providing interior landscaping and trees where none currently exist.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land. The R-4 Single-Family Residential district has no place on the subject property or the adjacent properties to the south. Mandating a 25' buffer area be created because of the incorrect zoning of the properties to the south would create an unreasonable burden on the applicant.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Land Development Code Waiver** of Section 10.2.4 to waive the required 25' Landscape Buffer Area along the adjacent property zoned R-4.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**Waiver of Section 5.9.2 to waive the required pedestrian connection from the building to Fern Valley Road.**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjoining property owners. There is no existing sidewalk connection to the existing vacant bank building. The applicant is providing a pedestrian connection to the other frontage of the property on Preston Highway, which is also very near to a TARC stop.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The waiver will not violate the Comprehensive Plan for the reasons mentioned in the applicant's main justification statement and because the intent of the regulation is being met through the provided pedestrian connection on Preston Highway. The proposed use of the property is as auto-centric as any possible use, a car wash. Therefore, there should be little pedestrian traffic to the subject property. Providing a connection near the TARC stop will allow employees who might not drive to the subject property a safe entrance.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The extent of the waiver is the minimum necessary to afford relief to the applicant. The applicant is proposing to provide the pedestrian connection at Preston Highway, where there is likely to be more pedestrian demand due to the presence of the TARC stop.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land. In order to construct a pedestrian path from Fern Valley Road, the applicant would need to remove a section of the existing driveway and build a sidewalk adjacent to the commercial property to the south and east (Cirilla's) and would cause pedestrians to cross multiple driving lanes to get to a use that, ultimately, is unlikely to be visited by pedestrians

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **APPROVE** the following requested **Land Development Code Waiver** of LDC Section 5.9.2 to waive the required pedestrian connection from the building to Fern Valley Road.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Development Plan and Binding Elements**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The site has no natural resources to conserve as it has previously been developed.

**WHEREAS**, the Louisville Metro Planning Commission further finds, Safe and efficient vehicular and pedestrian transportation is provided by the sidewalks and the existing access points on both street frontages. Possible locations for cross-connectivity are provided around the site if adjoining properties are ever re-developed. Bicycle parking is being added to the site to assist cyclists in using the site.

**WHEREAS**, the Louisville Metro Planning Commission further finds, Open space is not required for this proposal.

**WHEREAS**, the Louisville Metro Planning Commission further finds, MSD has approved the drainage facilities for the site.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposal is compatible with the surrounding area as it already is being used for myriad businesses, including automotive services and sales. The surrounding area is developed for other commercial and institutional uses as well. Therefore, the buildings, parking lots, screening, and landscaping are appropriately located.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposal conforms to the Comprehensive Plan and Land Development Code as Cornerstone 2020 encourages efficient land use and discourages development of vacant sites if existing commercial sites can be utilized.

**WHEREAS**, the Louisville Metro Planning Commission further finds, based on the evidence and testimony presented, the staff report, and the applicant's justification and

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

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

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

**Binding Elements**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
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

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the September 18, 2014 Planning Commission meeting.
7. Upon development or redevelopment of abutting properties, a unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout abutting sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the abutting property to be developed.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**Request:** Rezoning from R-6 to C-1 with a Conditional Use Permit, Variance, Landscape Waiver and Revised Detailed District Development Plan

**Project Name:** Ellingsworth Lane Apartments

**Location:** 11840 Ellingsworth Lane

**Owner:** Ellingsworth Lane Apartments, LLC  
Same as above

**Applicant:** Lifestyle Communities  
230 West Street, Suite 200  
Columbus, OH 43215

**Representative:** Deborah Bilitski  
500 W. Jefferson Street, Suite 2800

**Jurisdiction:** Middletown

**Council District:** 20-Stuart Benson

**Staff Case Manager:** Christopher Brown, Planner II

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

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

**Agency Testimony:**

00:46:52 Christopher Brown discussed the case summary, standard of review and staff analysis from the staff report.

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

Anthony Lococo, 230 West Street, Suite 200, Columbus, OH, 43215

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

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

00:58:30 Mr. Lococo gave a power point presentation that went over the history of the company and the site plan.

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

No one spoke in opposition for this case.

**Deliberation**

01:11:27 Planning Commission deliberation. Commissioners had no concerns with this case other than Commissioner Jarboe and Commissioner Proffitt having some concern about the Ellingsworth Lane traffic going back and forth.

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

**Zoning Change from R-6 to C-1**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, that the proposed change in zoning from R-6 Multi-Family Residential to C-1 Commercial and conditional use permit for a restaurant with outdoor alcohol sales and consumption and indoor entertainment on the property located at 11840 and 11950 Ellingsworth Lane comply with Guideline 1 of the Cornerstone 2020 Comprehensive Plan (the "Comprehensive Plan), because Guideline 1.B.3 provides that the Neighborhood Form may contain, at appropriate locations, neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services; these neighborhood centers should be at a scale that is appropriate for nearby neighborhoods; the Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; the proposed the restaurant at the clubhouse facility will provide a neighborhood-serving use for residents of the apartment community and surrounding areas; pedestrian walkways will provided to, from and throughout the entire development site, linking the focal point and various uses on the site with each other and with adjacent properties; therefore, the development provides an adequate level of vehicular, pedestrian, bicycle, and transit connectivity; the

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

development is appropriate in terms of scale, design, and intensity for a neighborhood; the clubhouse facility will be developed at a neighborhood scale incorporating a high quality architectural design that is compatible with the apartment community within which it is located, as well as the development in the surrounding area; and the applicant is also proposing to retain the large landscape buffers and berms along Ellingsworth Lane and adjacent to Swan Pointe that were part of the previously approved plan for apartments on the subject property.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 2 of the Cornerstone 2020 Comprehensive Plan because Guideline 2, Policy A.2. specifically provides that non-residential uses are appropriate in new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development; the restaurant in the clubhouse facility will be a unique amenity of an upscale apartment community and is intended to primarily serve the residents thereof; and the clubhouse building is designed to be compatible with the scale and design of the other buildings within the development and will contain apartment units on the upper stories.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 2 because the proposed development is designed in a compact pattern organized around a centralized focal point that is connected via walkways extending throughout the development; the proposed development incorporates significant landscaping and the applicant is utilizing a high quality architectural design for the proposed buildings; the buildings will be articulated to provide visual interest and will include a mixture of building materials, windows, transparent doorways and entry areas, and other animating features, all of which will work to promote vitality and sense of place in this neighborhood activity center; adequate parking will be provided as required by the Land Development Code, which is designed to ensure the safe and efficient movement of vehicles and pedestrians; interior landscape areas will be installed to break up the parking areas and enhance the overall aesthetic quality of the site; sidewalks will be built to provide adequate pedestrian linkages to, from, and through the development; the parking areas are designed to ensure safe pedestrian connectivity between the proposed structures; and the proposed development will also utilize the practice of shared access and parking to minimize the overall impervious area.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 3 of the Comprehensive Plan because the Neighborhood Form District encourages a mixture of land uses within neighborhoods provided they are designed to be compatible with each other; the clubhouse will be compatible with the general character of the surrounding residential



**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

development and neighborhoods in terms of height, scale, elevation, intensity, lighting, and appearance. Further, the clubhouse is adequately landscaped and buffered from adjoining properties, as it is located in the center of the proposed development; the buildings will include a variety of building materials and architectural animating features which will serve to harmonize the proposed development with the existing area by honoring the character of the Neighborhood Form District; a significant setback and landscaped berm will be provided along the northern and eastern edges of the subject property to fully buffer the clubhouse facility and apartment buildings from Belmont Park and Swan Pointe, two adjacent residential developments.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 3 because the proposed development is designed to enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties; stormwater runoff will be detained on-site at 1.5 times the runoff volume of the proposed development, which will help to alleviate any existing drainage problems in the area; the stormwater detention design will receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; parking is designed to be safe and simple and will utilize the practice of shared parking to minimize impervious surface; the proposed development will contain sufficient parking to serve the uses on the site, including handicap-accessible parking spaces in accordance with local, state, and federal requirements; and the neighborhood-serving use proposed, the design of the building, and the extensive internal and perimeter landscaping will all result in an amenity that serves the needs of the local residents in an effective manner, while retaining the neighborhood character and ensuring there will be no adverse noise, odor, or visual impacts on other properties in the vicinity.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guidelines 4 and 5 of the Comprehensive Plan because open space is provided in the overall apartment development which is designed to protect natural resources and meet aesthetic needs; significant landscape buffer areas are proposed, as approved in the previously approved apartment development, around the perimeter of the site; interior landscape areas are located throughout the entire development which include extensive landscape plantings; the open space areas are accessible by an interconnected system of walkways linking living areas with the clubhouse facility and other focal points within the development; and the site contains no environmental limitations, scenic or historic resources which would inhibit the proposed development.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guidelines 7, 8, and 9 of the Comprehensive Plan because the proposed restaurant within the clubhouse facility will not create additional traffic impacts as it will mainly serve residents of the apartment community and surrounding residents; the entrances are located to facilitate safe vehicular and pedestrian access to and from the apartment community and adjacent land uses; sidewalks will be provided throughout the development, ensuring that the subject property is easily accessible by pedestrians, bicycles, and motor vehicles alike; the proposed development will contribute to and enhance the overall mixture of uses in the area; by providing a neighborhood-serving use within an apartment community, the proposed development will enable area residents to minimize vehicular miles traveled, as well as total travel time, in order to minimize air pollution and to conserve fuel; the development is located to take advantage of the existing transportation system to complement the overall development of the area and minimize additional roadway construction; adequate parking spaces are provided on the subject property as required by the Land Development Code, including handicapped spaces as required by the ADA; and bicycle amenities will be provided within the development in accordance with the Land Development Code.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guidelines 10 and 11 of the Comprehensive Plan because the subject property is located above the 100 year flood plain, does not contain steep slopes, unstable soils, or blueline streams and, as a result, there are no environmental constraints which would prevent commercial development of this property; the proposed development is located on a site that will enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties; an Erosion Prevention and Sediment Control Plan utilizing best management practices will be implemented prior to commencing construction of the development; on-site detention areas will accommodate onsite drainage and mitigate any impacts of the proposed development to the watershed and its capacity to transport stormwater; stormwater runoff will be detained on-site at 1.5 times the runoff volume of the proposed development, which will help to alleviate any existing drainage problems in the area; and the stormwater detention design will receive approval from MSD prior to construction of the proposed development.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 12 of the Comprehensive Plan, because the proposal represents an efficient land use pattern and utilizes current traffic patterns; by providing a restaurant within the clubhouse and amenity area of the apartment community, the proposed development will enable and promote a reduction in vehicle miles traveled and increased pedestrian travel in an effort to reduce the air impacts of the development; and the neighborhood-serving use being proposed on the

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

subject property will also aid in reducing commuting time and transportation-related air pollution.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 13 of the Comprehensive Plan because the development meets or exceeds all landscape requirements of the Land Development Code; significant landscape buffer areas along Ellingsworth Lane and along the east property line, with large landscaped berms will be provided to ensure that the surrounding uses are adequately buffered from the proposed development; interior landscaping will be installed in the vehicular use areas, which will enhance the buildings, break up the parking areas, and enhance the overall aesthetics of the site; outdoor signage and lighting will comply with the Land Development Code and will be compatible with the surrounding area; and tree canopy in accordance with Land Development Code requirements will also be provided on the overall development site.

**WHEREAS**, the Louisville Metro Planning Commission further findsthe proposed rezoning and conditional use permit comply with Guidelines 14 and 15 of the Comprehensive Plan because the subject property will be served by infrastructure which has adequate carrying capacity for the proposed development; all necessary utilities, including water, electricity, telephone, and cable, are available; and the subject property is served by the Middletown Fire Department and the Louisville Metro Police Department.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of the City of Middletown that the requested Change in zoning from R-6, Multi-Family Residential, to C-1, Commercial, on property described in the attached legal description be **APPROVED**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**Conditional Use Permit to allow Outdoor Alcohol Sales and Consumption and Indoor Entertainment in C-1**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, that the proposed change in zoning from R-6 Multi-Family Residential to C-1 Commercial and conditional use permit for a restaurant with outdoor alcohol sales and consumption and indoor entertainment on the property located at 11840 and 11950 Ellingsworth Lane comply with Guideline 1 of the Cornerstone 2020 Comprehensive Plan (the "Comprehensive Plan), because Guideline 1.B.3 provides that the Neighborhood Form may contain, at appropriate locations, neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services; these neighborhood centers should be at a scale that is appropriate for nearby neighborhoods; the Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; the proposed the restaurant at the clubhouse facility will provide a neighborhood-serving use for residents of the apartment community and surrounding areas; pedestrian walkways will provided to, from and throughout the entire development site, linking the focal point and various uses on the site with each other and with adjacent properties; therefore, the development provides an adequate level of vehicular, pedestrian, bicycle, and transit connectivity; the development is appropriate in terms of scale, design, and intensity for a neighborhood; the clubhouse facility will be developed at a neighborhood scale incorporating a high quality architectural design that is compatible with the apartment community within which it is located, as well as the development in the surrounding area; and the applicant is also proposing to retain the large landscape buffers and berms along Ellingsworth Lane and adjacent to Swan Pointe that were part of the previously approved plan for apartments on the subject property.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 2 of the Cornerstone 2020 Comprehensive Plan because Guideline 2, Policy A.2. specifically provides that non-residential uses are appropriate in new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development; the restaurant in the clubhouse facility will be a unique amenity of an upscale apartment community and is intended to primarily serve the residents thereof; and the clubhouse building is designed to be compatible with the scale and design of the other buildings within the development and will contain apartment units on the upper stories.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 2 because the proposed development is designed in a compact pattern organized around a centralized focal point that is connected via walkways extending throughout the development; the proposed development incorporates significant landscaping and the applicant is utilizing a high quality architectural design for the proposed buildings; the buildings will be articulated to provide visual interest and will include a mixture of building materials, windows, transparent doorways and entry areas, and other animating features, all of which will work to promote vitality and sense of place in this neighborhood activity center; adequate parking will be provided as required by the Land Development Code, which is designed to ensure the safe and efficient movement of vehicles and pedestrians; interior landscape areas will be installed to break up the parking areas and enhance the overall aesthetic quality of the site; sidewalks will be built to provide adequate pedestrian linkages to, from, and through the development; the parking areas are designed to ensure safe pedestrian connectivity between the proposed structures; and the proposed development will also utilize the practice of shared access and parking to minimize the overall impervious area.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 3 of the Comprehensive Plan because the Neighborhood Form District encourages a mixture of land uses within neighborhoods provided they are designed to be compatible with each other; the clubhouse will be compatible with the general character of the surrounding residential development and neighborhoods in terms of height, scale, elevation, intensity, lighting, and appearance. Further, the clubhouse is adequately landscaped and buffered from adjoining properties, as it is located in the center of the proposed development; the buildings will include a variety of building materials and architectural animating features which will serve to harmonize the proposed development with the existing area by honoring the character of the Neighborhood Form District; a significant setback and landscaped berm will be provided along the northern and eastern edges of the subject property to fully buffer the clubhouse facility and apartment buildings from Belmont Park and Swan Pointe, two adjacent residential developments.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 3 because the proposed development is designed to enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties; stormwater runoff will be detained on-site at 1.5 times the runoff volume of the proposed development, which will help to alleviate any existing drainage problems in the area; the stormwater detention design will receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

commencing construction of the development; parking is designed to be safe and simple and will utilize the practice of shared parking to minimize impervious surface; the proposed development will contain sufficient parking to serve the uses on the site, including handicap-accessible parking spaces in accordance with local, state, and federal requirements; and the neighborhood-serving use proposed, the design of the building, and the extensive internal and perimeter landscaping will all result in an amenity that serves the needs of the local residents in an effective manner, while retaining the neighborhood character and ensuring there will be no adverse noise, odor, or visual impacts on other properties in the vicinity.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guidelines 4 and 5 of the Comprehensive Plan because open space is provided in the overall apartment development which is designed to protect natural resources and meet aesthetic needs; significant landscape buffer areas are proposed, as approved in the previously approved apartment development, around the perimeter of the site; interior landscape areas are located throughout the entire development which include extensive landscape plantings; the open space areas are accessible by an interconnected system of walkways linking living areas with the clubhouse facility and other focal points within the development; and the site contains no environmental limitations, scenic or historic resources which would inhibit the proposed development.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guidelines 7, 8, and 9 of the Comprehensive Plan because the proposed restaurant within the clubhouse facility will not create additional traffic impacts as it will mainly serve residents of the apartment community and surrounding residents; the entrances are located to facilitate safe vehicular and pedestrian access to and from the apartment community and adjacent land uses; sidewalks will be provided throughout the development, ensuring that the subject property is easily accessible by pedestrians, bicycles, and motor vehicles alike; the proposed development will contribute to and enhance the overall mixture of uses in the area; by providing a neighborhood-serving use within an apartment community, the proposed development will enable area residents to minimize vehicular miles traveled, as well as total travel time, in order to minimize air pollution and to conserve fuel; the development is located to take advantage of the existing transportation system to complement the overall development of the area and minimize additional roadway construction; adequate parking spaces are provided on the subject property as required by the Land Development Code, including handicapped spaces as required by the ADA; and bicycle amenities will be provided within the development in accordance with the Land Development Code.

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guidelines 10 and 11 of the Comprehensive Plan because the subject property is located above the 100 year flood plain, does not contain steep slopes, unstable soils, or blue-line streams and, as a result, there are no environmental constraints which would prevent commercial development of this property; the proposed development is located on a site that will enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties; an Erosion Prevention and Sediment Control Plan utilizing best management practices will be implemented prior to commencing construction of the development; on-site detention areas will accommodate onsite drainage and mitigate any impacts of the proposed development to the watershed and its capacity to transport stormwater; stormwater runoff will be detained on-site at 1.5 times the runoff volume of the proposed development, which will help to alleviate any existing drainage problems in the area; and the stormwater detention design will receive approval from MSD prior to construction of the proposed development.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 12 of the Comprehensive Plan, because the proposal represents an efficient land use pattern and utilizes current traffic patterns; by providing a restaurant within the clubhouse and amenity area of the apartment community, the proposed development will enable and promote a reduction in vehicle miles traveled and increased pedestrian travel in an effort to reduce the air impacts of the development; and the neighborhood-serving use being proposed on the subject property will also aid in reducing commuting time and transportation-related air pollution.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the proposed rezoning and conditional use permit comply with Guideline 13 of the Comprehensive Plan because the development meets or exceeds all landscape requirements of the Land Development Code; significant landscape buffer areas along Ellingsworth Lane and along the east property line, with large landscaped berms will be provided to ensure that the surrounding uses are adequately buffered from the proposed development; interior landscaping will be installed in the vehicular use areas, which will enhance the buildings, break up the parking areas, and enhance the overall aesthetics of the site; outdoor signage and lighting will comply with the Land Development Code and will be compatible with the surrounding area; and tree canopy in accordance with Land Development Code requirements will also be provided on the overall development site.

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposed rezoning and conditional use permit comply with Guidelines 14 and 15 of the Comprehensive Plan because the subject property will be served by infrastructure which has adequate carrying capacity for the proposed development; all necessary

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

utilities, including water, electricity, telephone, and cable, are available; and the subject property is served by the Middletown Fire Department and the Louisville Metro Police Department.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Conditional Use Permit for Outdoor Alcohol Sales and Consumption and Indoor Entertainment in C-1 with the following relief from the listed requirements.

1. The outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall not have to provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property.
2. The conditional use permit shall not be limited to restaurant uses in the C-1 that hold the following types of ABC licenses
  - a. Restaurant liquor and wine license by the drink for 100 plus seats
  - b. Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales
3. Outdoor sales and consumption of alcohol shall cease by 1 A.M on Sunday through Wednesday and by 2:30 A.M. on Thursday through Saturday.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Variance, Building Height**

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



**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**WHEREAS**, the Louisville Metro Planning Commission finds, that the requested variance of Table 5.3.2 of the Land Development Code, to allow the proposed clubhouse to be 45 feet in height (mean roof elevation will not adversely affect the public health, safety or welfare of the area because the additional building height will not be noticeable from surrounding properties; the proposed clubhouse building is near the center of the subject property, is surrounded by shorter buildings, which are, in turn, surrounded by large landscape buffer areas that include berms and significant plantings; and in Case No. B-18373-12, the Louisville Metro Board of Zoning Adjustment previously approved a variance to allow the proposed apartment buildings to be 39.5 feet in height.

**WHEREAS**, the Louisville Metro Planning Commission further finds, that the requested variance will not alter the essential character of the general vicinity for the reasons above and because the proposed apartment complex will contain traditional building materials in a walkable, pedestrian scale community, similar in many respects to the historic center of Middletown; and the proposed clubhouse building will be near the center of the subject property, reducing any impact it could have off-site.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the requested variance will not cause a hazard or nuisance to the general public because the proposed clubhouse building is intended to be both the geographic and programmatic center of the proposed community; the limited amount of additional height will allow the clubhouse to be designed in such a way as to reflect its significant role in the community and will allow the building to contain apartment units on the upper floors.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations it will allow a single building located in the middle of the proposed apartment community to be slightly taller than the rest; the subject property is very large, and all of the proposed buildings have been designed to be compatible with one another and with the buildings located on adjacent properties.

**WHEREAS**, the Louisville Metro Planning Commission further finds, the requested variance arises from special circumstances, which do not generally apply to land in the general vicinity because the subject property is located adjacent to the Blankenbaker Parkway interchange at I-64, near a large religious campus and other non-residential uses; the subject property is also large, and significant setbacks and landscape buffer areas are provided along the property's perimeter to adequately screen the proposed development from adjacent residential properties; the location of the clubhouse building near the center of the proposed development as well as the large setbacks and landscape buffer areas around the property's perimeter ensure that the additional 5 feet of building height will have no impact on surrounding properties; and the strict

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

application of the regulations would create an unnecessary hardship because the applicant would be unable to include residential units on the upper floors of the clubhouse building, which is a critical component of the applicant's overall mixed-use development.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **APPROVE** the **VARIANCE** of Chapter 5.3.1.C.5 of the Land Development Code to allow a proposed building height of 45'.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**Landscape Waiver**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, that the requested waiver of Section 4.2.42.D to not provide a 6-foot continuous screen around the boundary of the outdoor amenity area, and a waiver of Section 10.2.4.A to not provide the required 25-foot perimeter LBA between the C-1 and R-6 zoned property will not adversely affect adjacent property owners because the club is internal to the proposed apartment community and is designed as a mixed-use community facility which also includes 16 apartment units, community space, leasing office, fitness center, restaurant, pool, deck and outdoor recreation areas; the building materials of the clubhouse are the same as the surrounding residential apartment buildings; the clubhouse is also comparable in terms of size, scale, and massing; the proposed apartment community is intended as a walkable, pedestrian-friendly neighborhood where most of the club patrons will commute on foot; the clubhouse is located away from perimeter streets and interior to the apartment community; the large setbacks and landscape berms along Ellingsworth Lane and the east property line, the clubhouse and the surrounding buildings within the community will effectively buffer the restaurant and outdoor amenity areas from the adjacent residential uses; residential streets and buildings surround the outdoor amenity area; and the clubhouse has been designed as a true multi-use facility that will be an integral part of the larger apartment community.

**WHEREAS**, the Louisville Metro Planning Commission further finds, that the requested waivers will not violate the Comprehensive Plan for all the reasons stated in the findings of fact for the rezoning and conditional use permit, including that the clubhouse building has been specifically designed to be compatible in terms of building materials, mass, size, and scale with the apartment community which it will serve; the clubhouse facility will be an integral and pedestrian-accessible part of the overall development, which incorporates new urban design features, including two- and three-story buildings in a traditional architectural style, compact site design, a grid pattern of streets with sidewalks, and centrally-located and accessible open space/amenity areas; and the proposed site design and associated amenities will result in a walkable, compact, and vibrant community that encourages interaction among residents, and ease of access to entertainment and recreation.

**WHEREAS**, the Louisville Metro Planning Commission further finds, that the requested waivers are the minimum necessary to afford relief because, if the requested waivers are not granted, the applicant would be required to provide a 25-foot landscape buffer area and 6-foot high screen around the clubhouse and amenity area, which would be in

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

direct conflict with new urban design principles which seek to integrate neighborhood services, amenities, and gathering spaces with the surrounding neighborhood to promote walkability, ease of access to entertainment and recreation, and encourage interaction among residents; to require a 25-foot landscape buffer area around the C-1 zoned property would preclude the ability to have a mixture of residential, commercial, and recreational uses within the clubhouse facility; and the requested waivers are partially the result of the applicant's attempt to minimize the amount of area to be rezoned to C-1 and subject to the conditional use permit.

**WHEREAS**, the Louisville Metro Planning Commission further finds, that the applicant has incorporated design measures which exceed the minimum requirements of the Land Development Code and compensate for non-compliance with the requirements to be made because the clubhouse building has been designed as an integral part of the apartment community and is compatible in terms of building materials, size, mass, and scale of the residential buildings; the community has been designed with a pedestrian friendly streetscape with on-street parking that allows residents to walk safely to the club facility; the clubhouse will be set back from Ellingsworth Lane and located within the interior of the community so as to be less visible from perimeter roads and have less impact to surrounding properties; and the overall development provides a 150-foot setback and 10-foot berm along Ellingsworth Lane, and 75-foot setback and 8-foot berm adjacent to Swan Pointe.

**WHEREAS**, the Louisville Metro Planning Commission further finds, 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**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of the City of Middletown that the Landscape Waiver from Chapter 10.2.4 of the Land Development Code to eliminate the required Landscape Buffer Area between the R-6 and C-1 zoning boundary be **APPROVED**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**Development Plan and Binding Elements**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, ~~There~~there does 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.

**WHEREAS**, the Louisville Metro Planning Commission further finds, ~~Provisions~~provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan.

**WHEREAS**, the Louisville Metro Planning Commission further finds, ~~Open-open~~space requirements for the proposed development will be provided per the Land Development Code.

**WHEREAS**, the Louisville Metro Planning Commission further finds, ~~The-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.

**WHEREAS**, the Louisville Metro Planning Commission further finds, ~~The~~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. Buildings and parking lots will meet all required setbacks.

**WHEREAS**, the Louisville Metro Planning Commission further finds ~~The~~the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code with the exception of the requested waiver and variance which follow the guidelines of Cornerstone 2020,

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

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of the City of Middletown that the Revised Detailed District Development Plan be **APPROVED**; subject to the following amendments to the Binding Elements.

13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the ~~August 21st, 2013 Development Review Committee~~ **September 18, 2014 Planning Commission meeting** and City of Middletown Commission meeting. Final elevations of any and all structures must be approved by the City of Middletown prior to issuance of a building permit. Developer will provide City of Middletown with information about its proposed interior finishes and amenities. The final construction plans (which shall be provided to City of Middletown prior to issuance of any building permit) must be consistent with the interior finishes and amenities shown at the City of Middletown Commission meeting.

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16. As part of the developer's initial work on the property, the developer will begin construction and prior to requesting certificates of occupancy for any residential units, the developer shall complete construction of the following roadway improvements, ~~which are shown on the approved detailed district development plan~~ **shown in the "Plans of Proposed Project Ellingsworth Lane and Blankenbaker Parkway Improvements" prepared by Gresham Smith & Partners, a copy of which is attached hereto:**

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- ~~(1) Dual left turn lanes on Ellingsworth Lane onto southbound Blankenbaker Parkway;~~
- ~~(2) A right turn lane on northbound Blankenbaker Parkway onto Ellingsworth Lane; and~~
- ~~(3) A third lane along Ellingsworth Lane from its intersection with Blankenbaker Parkway and extending along the frontage of the subject property.~~

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22. **The use of the C-1 portion of the subject property shall be limited to one restaurant with indoor/outdoor alcohol sales and consumption and indoor entertainment, multi-family residential use, leasing office, clubhouse and associated amenities, including an athletic facility, salon, spa, swimming pool or pools and other indoor and outdoor recreation areas which are associated with the proposed multi-family residential development, and parking spaces and drive aisles. All other uses shall be approved by the City of Middletown, after a public hearing and recommendation by the Planning Commission. Notice of the Planning Commission public hearing shall be given at least fourteen**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**(14) days in advance of the hearing to first and second tier adjoining property owners.**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1026**

**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Site Inspection Committee**

No report given.

**Planning Committee**

No report given.

**Development Review Committee**

No report given.

**Policy and Procedures Committee**

No report given

**CHAIRPERSON/DIRECTOR'S REPORT**

No report given

**ADJOURNMENT**

The meeting adjourned at approximately 2:15 p.m.

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**Chair**

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**Planning Director**