

**Planning Commission Minutes
August 20, 2015**

Public Hearing

Case No. 15ZONE1012

Request: Change in zoning from R-4 and R-5 Single Family Residential to R-7 Multi-Family Residential and C-1 Commercial; a General District Development Plan; Detailed District Development Plan; Binding Elements; a Variance; and Waivers (including a Family Scholar House, Boys and Girls Club, Senior Living, and Commercial)

Project Name: Cane Run Multi-Use Development

Location: 4646-4650 Cane Run Road

Owner: The Salvation Army
Major Thomas B. Corbitt, Representative
1424 NE Expressway
Atlanta, GA 30329

Louisville Metro Government
Jeff Mosley, Representative
444 South 5th Street Suite 500
Louisville, KY 40202

Applicant: Jacob Brown, Representative
Riverport Development LLC
1122 Rogers Street
Louisville, KY 40204

Representatives: Cliff Ashburner
Wyatt, Tarrant & Combs LLP
500 West Jefferson Street Suite 700
Louisville, KY 40202

Engineer/Designer: David Nofsinger
The Weber Group
5233 Progress Way
Sellersburg, IN 47172

Kathy Linares
Mindel Scott & Associates
5151 Jefferson Boulevard

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Louisville, KY 40219

Jurisdiction: Louisville Metro

Council District: 1 – Jessica Green

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

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

Agency Testimony:

02:48:28 David Wagner presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) Mr. Wagner also discussed the plan that was presented to the Commissioners by the applicant at today's hearing (not in advance.) He added that the northeast corner has been the focus of the revisions and pointed out the connection on the site plan.

02:57:48 Mr. Wagner said a pedestrian access has been included on Camino Way.

03:00:39 In response to questions from Commissioners Jarboe and Blake, Mr. Wagner discussed aspects of 1994 Cane Run Road Corridor Study.

03:02:23 In response to a question from John Carroll, Legal Counsel for the Planning Commission, Mr. Wagner discussed the Alternative Plan for Connectivity.

The following spoke in favor of the proposal:

Cliff Ashburner, Wyatt, Tarrant & Combs LLP, 500 West Jefferson Street Suite 700, Louisville, KY 40202

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Jennifer Caummisar, The Weber Group, 5233 Progress Way, Sellersburg, IN 47172

Michael Gross, 1469 South 4th Street, Louisville, KY 40208

Mindy Age, 4625 Cane Run Road, Louisville, KY 40216

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Summary of testimony of those in favor:

03:04:36 Cliff Ashburner presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

03:18:45 In response to a question from Commissioner Tomes, Mr. Ashburner provided a breakdown of proposed uses in the proposed plan.

03:20:14 Commissioner Jarboe and Mr. Ashburner discussed traffic on Cane Run Road. Mr. Ashburner added that the traffic study is not finalized.

03:22:17 Commissioner Lewis asked Mr. Ashburner how the applicant would control what kind/s of business would go into the Commercial portion.

03:25:19 Mindy Age spoke in favor of the proposal and said this seems like a positive development.

The following spoke in opposition to the proposal:
No one spoke.

The following spoke neither for nor against the proposal:
Curtis White, 3419 Donald Drive, Louisville, KY 40216

Summary of testimony of those neither for nor against:

03:24:39 Curtis White was called but was not present to speak. Mr. Ashburner said he had spoken with Mr. White outside the courtroom at today's hearing.

Rebuttal:

There was no rebuttal since no one spoke in opposition.

03:27:12 Mr. Carroll asked Mr. Ashburner if the Revised Development Plan eliminated the need for the Metro Council to approve an Alternative Plan for Connectivity on Lot 3. Mr. Ashburner said no. He said there is access between surrounding uses but there is not a direct access point through the project.

Deliberation:

03:31:33 Commissioner's deliberation.

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03:33:11 Commissioner Brown said that the pedestrian connectivity to Lots 1 and 5 could be improved. He added that, while this proposal will generate more traffic, the State has a policy that, when an application is made for an encroachment permit, they will evaluate what improvements are necessary at that time. He said that, if the third access does go through, and the State approves it, he would ask that the parking directly across from the entrance be removed, to minimize maneuvering in that area.

03:37:50 In response to some Commissioners' questions, Mr. Wagner said all the Detailed Plans for the individual commercial lots at the front along Cane Run Road will need to come back for review. Jonathan Baker, Legal Counsel for the Planning Commission, explained more about how binding elements are attached to a General District Development Plan versus a Detailed District Development Plan.

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

03:41:51 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1-Community Form**. The subject property is located in the Neighborhood Form District. The Neighborhood Form District encourages a variety of housing options, including multi-family and inclusive housing. The Form District also encourages commercial though more often at the intersection of an arterial street and a collector. The proposed development complies with this Guideline as it contains housing for single-parent college students {Family Scholar House}, families {family apartments} and seniors {senior apartments}. The proposal includes commercial along Cane Run Road but at a size and location that is appropriate for the area. In addition to these uses, the proposed development will include a Boys and Girls Club and an academic services center, both of which will serve the residents in the proposed development and the broader community; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 2-Centers**. The proposed development complies with this Guideline and its applicable policies. The subject property is over 34 acres, a size that rivals many centers. The proposed development includes three different multi-family options, community facilities, open space and a small amount of commercial space. The project forms a campus or center unto itself, and

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commercial uses are appropriate in this circumstance. The proposed commercial is designed to be neighborhood-serving, and the applicant is marketing the proposal to neighborhood-serving users. The proposed development includes a park area, internal pedestrian connections and community serving uses in the Boys and Girls Club and academic services center; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 3-Compatibility**. The proposed development complies with this Guideline and its applicable policies. The proposed buildings for which renderings are available are traditional in style and building materials. The buildings are also at least 70' from the nearest property line and, in most cases, much more. The applicant will provide screening and buffering to mitigate any incompatibility between the proposal and nearby residences. At the neighbor meeting, the applicant stated that it would work with adjacent landowners on buffer design. The proposed development has been designed to place the most intense uses along Cane Run Road, with residential properties behind and between the commercial and surrounding residential uses. The proposed development is also at a density that is appropriate on Cane Run Road, especially considering the size of the subject property and the amenities included in the project. The proposed development should have no impact on noise, odor or light pollution; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guidelines 4-Open Space and 5-Natural Areas and Scenic and Historic Resources**. The proposed development complies with these Guidelines and their applicable policies. The proposed design includes a 2.6 acre park area and other open space within both the family apartments and Family Scholar House site. There is also ample open space on the senior apartment site. There are no known natural features that impact the development of the project, nor are there any known historic resources; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guidelines 7-Circulation and 8-Transportation Facility Design**. The proposed development complies with these Guidelines and their applicable policies. The proposed development contains three entrances onto Cane Run Road, and a single emergency access to Trumpet Way. The proposal is designed as a self-contained campus, with internal pedestrian connections and connections to the area sidewalk system. There is adequate parking and adequate room for transit circulation within the site. All of the individual sites will have pedestrian and vehicular access to the main internal access road, "Street A."; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 9-Bicycle, Pedestrian and Transit**. The proposed development complies with this Guideline and its applicable policies. The proposed development will provide

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bicycle parking per the LDC and contains an access network sufficient to allow for transit service; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 10-Flooding and Stormwater**. The proposed development complies with this Guideline and its applicable policies. The subject property will provide onsite detention sufficient to comply with all MSD standards and contains many, many acres of open space. The project should have no negative effect on adjacent landowners due to stormwater; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 11-Water Quality**. The proposed development complies with this Guideline and its applicable policies. The proposed development contains several acres of open space, both within the various sections and within the 2.6 acre park. The proposed development will also contain detention basins sized to handle stormwater runoff from the new development and to serve, as required by MSD, as water quality measures; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 12-Air Quality**. The proposed development complies with this Guideline as it should have no negative impact on air quality. The proposal is near transit and has contemplated transit in its design. The proposal is a mixed use development, which should encourage residents within and near the proposed development to walk to the commercial area of the project; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 13-Landscape Character**. The proposed development complies with this Guideline as landscaping will be provided to meet or exceed the requirements of the LDC. The applicant is also proposing to retain or install tree canopy and interior landscape areas that exceed the requirements of the LDC; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented and the applicant's justification 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 Louisville Metro Council that the requested change in Zoning from R-4 and R-5 (Single Family Residential) to R-7 (Multi-Family Residential) and C-1 (Commercial) for a Family Scholar House, Boys and Girls Club, Senior Living and Commercial, be **APPROVED**.

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The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner, Kirchdorfer, White, and Proffitt.

ABSTAINING: No one.

Variance

03:43:10 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the granting of the variance will not affect the public health, safety or welfare because the additional setback from the street is a minimal increase from what is required and there are no other commercial structures along this side of the street to match; and

WHEREAS, the Commission further finds that the granting of the variance will not alter the essential character of the general vicinity because the additional setback from the street is a minimal increase from what is required and there are no other commercial structures along this side of the street to match; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. Additional setback from the street is a minimal increase from what is required and there are no other commercial structures along this side of the street to match; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the additional setback from the street is a minimal increase from what is required and there are no other commercial structures along this side of the street to match; and

WHEREAS, the Commission further finds that the requested variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because there are no other commercial structures along this side of the street to match; and

WHEREAS, the Commission further finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land as there have been no objections to the proposal from the public; and

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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, but the entire development has been designed around the commercial buildings receiving this relief; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report that all of the Standards for granting a Variance are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance of 5.3.1.B.5 of the LDC to exceed the maximum 80' setback along Cane Run Road for Lots 1, 5, 6 and 7.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner, Kirchdorfer, White, and Proffitt.

ABSTAINING: No one.

Waiver of 10.2.4.B of the LDC to allow more than 50% overlap of the existing 200' LG&E easement over the required 20' LBA along the site's west property line for Lots 3 and 4

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

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because the adjacent property will still be provided adequate buffering from the proposed development; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020 as stated in the rezoning's comprehensive plan review; 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 because they will be able to utilize a wide area that effectively acts as a buffer area currently; 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 or create an

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unnecessary hardship on the applicant because the wide area already acts as a buffer between the residents and the proposed development; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report 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 Waiver of 10.2.4.B of the LDC to allow more than 50% overlap of the existing 200' LG&E easement over the required 20' LBA along the site's west property line for Lots 3 and 4.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner, Kirchdorfer, White, and Proffitt.

ABSTAINING: No one.

General District Development Plan and binding elements

03:44:51 On a motion by Commissioner Brown, seconded by Commissioner Peterson, 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. All tree canopy requirements of the Land Development Code are being met; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. Sidewalks and vehicular access have been provided from multiple streets and connectivity with the subdivisions at the northwestern end of the site will be provided; and

WHEREAS, the Commission further finds that, since open space is required for this proposal, appropriate open space has been provided for this development as required by LDC regulations; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate

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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 is compatible with the existing and future development of the area; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report 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 General District Development Plan and the binding elements on pages 11 and 12 of the staff report, **ON CONDITION** that parking on Lot 5 is evaluated if the third access point is permitted by the State; and **ON CONDITION** that direct pedestrian connections are provided to sublots 1 and 5 when those lots are proposed for development; and **ON CONDITION** that sidewalks either be provided or a waiver obtained for the new public road connection at the rear of the property. The binding elements are as follows:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Develop Louisville and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
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 August 20, 2015 Planning Commission meeting for Lots 2, 3, 4 and 8.

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8. The materials and design of proposed structures for Lots 1, 5, 6 and 7 shall be reviewed for compliance with the LDC upon submittal of a Detailed District Development Plan for each lot.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner, Kirchdorfer, White, and Proffitt.

ABSTAINING: No one.

Alternative Plan for Connectivity for Lot 3

03:47:15 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that, based on the evidence and testimony presented, the applicant's justification and the staff report 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 Louisville Metro Council that the requested Alternative Plan for Connectivity for Lot 3 as shown on the site plan as presented today be **APPROVED**, which includes pedestrian connectivity to one of the abutting stubs as well as the cross-connection between the two compatible uses..

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner, Kirchdorfer, White, and Proffitt.

ABSTAINING: No one.

Detailed District Development Plan for Lots 2, 3, 4 and 8

03:47:55 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that there does not appear to be any environmental constraints or historic resources on the subject site. All tree canopy requirements of the Land Development Code are being met; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. Sidewalks and vehicular access have been provided from multiple streets and connectivity with the subdivisions at the northwestern end of the site will be provided; and

WHEREAS, the Commission further finds that, since open space is required for this proposal, appropriate open space has been provided for this development as required by LDC regulations; 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 is compatible with the existing and future development of the area; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report 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 Detailed District Development Plan for Lots 2, 3, 4 and 8.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner, Kirchdorfer, White, and Proffitt.

ABSTAINING: No one.

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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 5:10 p.m.

Chairman

Division Director