



**PUBLIC HEARING
FEBRUARY 1, 2024– 6:00 PM
UNION FIRE DEPARTMENT
9611 US HWY 42
UNION, KY 41091**

CALL TO ORDER

Mayor Solomon called the Public Hearing to order at 6:00 PM.

PLEDGE OF ALLEGIANCE

Mayor Solomon led all attendees in the Pledge of Allegiance.

ROLL CALL

A quorum was present, and a roll call was taken. Commissioner John Mefford, Commissioner Jeremy Ramage, Commissioner Brian Garner, Commissioner Doug Bine, and Mayor Larry Solomon.

MAYOR COMMENTS

Mayor Solomon announced the City Commission was holding a public hearing on the application for a Change in Concept Development Plan made by 9541 US 42, LLC, per Thomas J. Ackermann, the applicant, for the property owner, the City of Union.

The request is to allow the construction of a 19,432 square foot grocery store on Lots 2 and 3 of the Union Promenade Development.

Mayor Solomon stated the record consists of:

1. Planning Commission Resolution R-23-05-A.
2. Application for Change in an Approved Concept Development Plan, with narrative.
3. Staff Report with attachments, including application with narrative, concept plans and architectural renderings.
4. Minutes of Planning Commission's Public Hearing of November 1, 2023.
5. Minutes of Planning Commission's Business Meeting of December 6, 2023.
6. Zone Change Committee Report of December 6, 2023.
7. Zone Change Committee Vote of November 15, 2023.

8. Condition Letter, signed by Applicant on November 16, 2023, and
9. Signage and Viewshed Easement Agreement dated March 17, 2023, and recorded on March 20, 2023.

Mayor Solomon asked for a motion to accept the Planning Commission's Record and adopt it into the City Commission's record of proceedings of this Public Hearing.

Commissioner Bine made a motion and Commissioner Mefford seconded that motion.

Motion approved 5-0

City Clerk Tammy Wilhoite marked the Planning Commission's Record as Exhibit 1 and included that into the record for the Public Hearing.

Mayor Solomon explained the meeting rules that were adopted by the City Commission in October of 2023 and stated they will be followed for the Public Hearing.

The City Commission will vote on this request at the Regular Commission meeting scheduled for Monday February 5, 2024, at 6:00 PM in the Union City Building 1843 Bristow Drive, Union Kentucky 41091. There will be no new evidence or testimony allowed at the Regular Meeting.

Mayor Solomon explained each Commissioner may present his position, and then he will ask for a motion, second and a vote on the final disposition of this application, The Commissioners may either:

- Approve the requested Change in an Approved Concept Development Plan by ordinance.
- Approve it, by ordinance, with conditions of approval that are different than the condition suggested by the Planning Commission.
- Deny the request, with Findings of Fact and Conclusion of Law Derived from the evidence and testimony in the record; or
- Do nothing, in which case the Planning Commission's recommendation will become effective on March 6, 2024, by operation of law.

Mayor Solomon asked everyone in attendance wishing to speak to be sworn in by the City Clerk.

PRESENTATION BY APPLICANT

Thomas J. Ackermann one of the developers of 9541 US 42 gave a brief overview of the project. He explained twelve million dollars in infrastructure was required and now completed. Among the sites to be constructed, lot twelve Children's Hospital, this was the first modification change in the size and the scale of what was originally shown on the concept plan. The Planning Commission determined that the combination of four buildings into one and an increase in size was not considered a major modification. Further development consists of the construction of

forty-four patio homes being built by Drees Homes, a multi-family site consisting of 297 apartment units. Lot number one is United Dairy Farmers (UDF) which is already open, lots four and five have been sold to a local developer with construction on lot five to begin in the second quarter of this year with approved tenants including restaurants, retail, and an exercise facility. Lot six has a completed shell and the interior buildout is underway, this building is fully leased with a med spa, nail salon, and Goodwood Brewery. Lot seven is almost complete in regards to the shell, and the developers are working with a medical use, fitness facility, and restaurants for the front office building. Mr. Ackermann noted that both lots six and seven were comprised of originally two buildings that during the approval process with Boone County were combined into one building. Lot eight is planned for single use of a free-standing restaurant, lot nine is designed potentially for a single user, lot ten will be a multi-tenant building that will house two restaurants, a bourbon and cigar lounge and an exercise studio. The developers are in discussion with a single user on lot eleven with daytime and weekday use. The developer is asking for consolidation of lots two and three for approved use within the zoning which would be a grocery store.

Bob Koch, Master Architect and Planner for the development explained a grocery store was approved in the initial Planning Development for the Promenade. There has only been one minor change from the master planning perspective to change from one building to two. The original plan that was proposed and approved had the two buildings side by side on the right-hand side of the parcel and the parking on the left-hand side and the parking was the view run to see the hospital. At the time there was a curb cut leading directly back to the hospital. The traffic Commission denied the curb cut.

Thomas J. Ackermann mentioned they are asking for approval for the proposed project that was unanimously approved by Boone County Planning Commission.

QUESTIONS AND COMMENTS FROM CITY COMMISSION

Commissioner Bine wanted clarification from the developer if Children’s Hospital is a medical office building or an emergency hospital. Mr. Ackermann could not answer that question. Commissioner Bine asked that until clarification could be made, the term hospital not be used.

Commissioner Garner wanted to clarify the issue is not the brand of Aldi. The issue is the consolidation, the use and what may or may not be the deviation from the approved plan.

Commissioner Garner asked Mr. Ackermann what measures were taken to solicit community feedback and input regarding the change.

Mr. Ackermann explained he has reached out to individual homeowners and Homeowner Associations that are adjacent to the development. He has held public meetings at open houses at Fowlers Creek Homeowners Association. He met with Harmony Board numerous times to

present information and asked for permission to hold a meeting with their residents, but the request was denied.

Commissioner Garner asked about the store hours. Clayton Schrey a representative with Aldi responded the store hours will be from 9:00 AM to 8:00 PM seven days a week.

Commissioner Garner inquired about the main economic impact with an Aldi from the original proposal of a medical facility. Attorney Jim Parsons mentioned there is an offset for the TIFF district from what the county will receive.

Commissioner Garner mentioned in the August 18, 2021, Planning Commission minutes it is mentioned there was no massive parking area and no need for a big retailer to attract business for others. He asked Mr. Ackermann if he feels the change request is consistent with the statement from the minutes.

Mr. Ackermann responded he feels this request matches what was done to accommodate Children's Hospital because with the viewshed easement that parking lot is going to be slightly larger than the original design, this just relocates where that is and enhances the viewshed to Children's Hospital in terms of a major retailer taking two 10,000 square foot buildings and combining it into one building slightly less than 20,000 square feet to accommodate one user. He feels this will bring more tenants to the development.

Commissioner Garner is concerned with market saturation with potentially three grocery stores in a small radius. He asked what other type of tenants could use the proposed building if Aldi goes out of business. Mr. Ackermann did not have an answer.

Commissioner Ramage asked the developer what was done to break down barriers of entry for potential businesses wanting to come to the Promenade.

Mr. Ackermann stated marketing has been conducted locally, regionally, and nationally for tenants. Packages have been offered including free rent, additional tax incentives, and flexible terms for businesses to enter a space.

Commissioner Ramage asked what are the three top reasons businesses do not want to come to the Promenade.

Mr. Ackermann responded the biggest concern is there is not enough daytime population.

Commissioner Bine asked what has changed in the past two years from the time the Promenade was originally proposed. He explained the population of Union has increased.

Mr. Ackermann explained that even though the population may have increased, that is residents and not people who are in the area during the day.

Commissioner Mefford asked about lot eleven and why it is restricted to daytime use.

Mr. Ackermann explained the developer did not restrict the use; the proposed tenant needs are for daytime hours.

REPORT

City Administrator Amy Safran stated the efforts made by the city to give notice for the Public Hearing.

- A sign was posted for fourteen consecutive days on the property.
- Letters were mailed to adjoining property owners and the Applicant.
- Legal ads were published online January 13, 2024, using LINK NKY and January 17, 2024, using Cincinnati Enquirer.
- Notice was published to the city website on January 12, 2024.
- Notice was posted on multiple dates to the city's social media pages.
- Notice was posted on the city building January 31, 2024.
- Notice was posted on the Union Fire Department building January 31, 2024.

REPORT WITH EXHIBITS

Attorney Tom Breidenstein was hired by the city Commission to assist in the review of the application. His role is to ensure proper procedure is followed and the Commissioners have enough information to make an informed decision. The final decision is the full responsibility of the Commission without assistance from Attorney Breidenstein.

Mr. Breidenstein presented information from exhibits two through nine from the report presented to the City Commission for the review of Application of 9541 US 42, LLC for a Change in an Approved Concept Development Plan.

Attorney Breidenstein asked the Commissioners during deliberations and considerations to compare the current presentation with what was proposed.

- June 6, 2021 – Application for Zoning Map Amendment submitted
The application included a narrative description, attached – Exhibit 2
- August 18, 2021- Public Hearing held by Boone County Planning Commission
The minutes of that Public Hearing, attached – Exhibit 3
- October 6, 2021 – Boone County Planning Commission voted to recommend approval of Zoning Map Amendment and Concept Development Plan, with conditions.
The approved Concept Development Plan attached – Exhibit 4

- October 25, 2021, PowerPoint Presentation to City of Union City Commission
Seven pages from this PowerPoint relating to Lots two and three – Exhibit 5
Forty-three pages of the full PowerPoint is also submitted – Exhibit 6
- November 3, 2021 – Second Reading of Ordinance No. 2021-18, approving the requested Zoning Map Amendment and Concept Development Plan
- March 17, 2023 – Signage and Viewshed Easement Agreement
Recorded March 20, 2023. Included in Exhibit -1 Resolution R-23-035-A
The easement involves UDF and 9541 US 42, LLC as Grantors of an easement across Lot 1 (UDF lot) and Lot 2 for the benefit of Children’s Hospital Medical Center on Lot 12.

Attorney Breidenstein mentioned there was no indication in his review that the configuration of the lots and the buildings and the parking areas that are shown on the easement document were ever approved by the Planning Commission or by the by the city Commission. The plan is to forego this easement altogether in lieu of a new easement that was discussed earlier in the hearing.

Mayor Solomon asked why this was important to the city as an owner of the property. Attorney Breidenstein stated only an owner of a property has permission to grant an easement. He mentioned if an owner does not grant permission the easement should be invalid an unenforceable.

- Date unknown – Screenshots of Marketing Website for Union Promenade
<https://www.theunionpromenade.com> – consisting of an overall layout plan; very similar to approved plan with two buildings on two separate lots, no mass of parking – Overview description of Union Promenade showing both Lot 2 and 3 as separate buildings - Exhibit 7
- October 2, 2023 – Application for Change in an Approved Concept Development Plan submitted – see Exhibit “A” to the Resolution R-23-035-A, designated as Exhibit 1.
- November 1, 2023 – Public Hearing and Staff Report for Current Application
See the full Staff Report of Exhibit “A” to the Resolution R-23-035-A, designated as Exhibit 1.
Please also see Exhibit 8, which is a slide from the Planning Commission Staff’s PowerPoint Presentation on November 1, 2023, comparing the approved Concept Development Plan for Lots 2 and 3 and the proposed Concept Development Plan for the consolidated lot.
- December 6, 2023 – Boone County Planning Commission voted to recommend approval of the request.
See Committee Report at Exhibit “B” of Resolution (Exhibit 1), with one condition related to landscaping and screening.

Attorney Breidenstein mentioned the Commission needs to consider if what is being presented is consistent with the plan that was approved. They also need to consider the ripple effect of

the decision of approval. If these lots are allowed to be consolidated and a larger building than what was originally planned be built, will this send a precedent for future request for even larger buildings to be built.

- Public Hearing Email Comments Received by Communications Coordinator Jaime Lyons – Exhibit 9

In conclusion Attorney Breidenstein stated the Commissioners will need to decide if this plan is consistent with the current approved plan and if so, that is an option to approve, if inconsistent there is an option to deny for stated reasons that will be given in the record.

Mayor Solomon asked for a motion to admit exhibits two through nine into the record of this meeting. Commissioner Mefford made a motion and Commissioner Garner seconded the motion. **Motion approved 5-0**

Commissioner Bine expressed his concern of developer Thomas J Ackermann not being fully transparent with the Commission when he invoked Non-Disclosure Agreement (NDA) when asked for information of future tenants in the Promenade. However, that information was shared in a recent meeting with Villas of Fowlers Creek Homeowners Association.

PUBLIC COMMENTS

Gerald Merk feels a walkable area is important and is in favor of an Aldi store. He realizes the original plan is not what is in line with what was proposed but sometimes plans change.

Charles Gerardi is familiar with Aldi from his work experience. He feels they are a great company. He realizes the plan has changed but there is a need to be flexible and he is in favor of Aldi.

Noreene Morgan, President of the Homeowner Association for Villas of Fowlers Creek spoke in favor of Aldi coming to Union. She explained Boone County Planning Commission had a public hearing, a vote was taken, and the project was approved unanimously. She mentioned there are 1500 new building permits for new homes in and around Union and expressed her concern of where residents will shop. Ms. Morgan explained the Villas of Fowlers Creek has seventy-eight owners. She brought with her a petition with fifty signatures of residents who were in favor of Aldi and a petition with twelve signatures of those residents who were opposed. The remaining owners did not give an opinion.

Mayor Solomon questioned Ms. Morgan about a survey discussed by her at a Planning Commission meeting. She explained the survey was thirty-seven residents who sent emails stating they were not opposed. Mayor Solomon clarified with Ms. Morgan the question on the survey only addressed those not opposed and not those who were in favor. Ms. Morgan agreed with Mayor Solomon.

Chris Pavese supports Aldi. He questioned if the Commission would be opposed to Aldi if it were going to another location in Union. He mentioned there has been a considerable amount of work done for the curb cut on US Hwy 42. He mentioned if Aldi is not approved the developer will have to start all over and the project will be delayed. He stated if the parking lot for Aldi was an issue why was not underground parking mandated.

Bill Smith is in favor of Aldi, he feels like the store would bring good competition to other stores.

Karen Franxman feels like Aldi is a good business for the city, it is a small grocery store and would be good for citizens of Union.

Ben Taylor works for Drees Homes. He mentioned the builder chose the Promenade development because of the walkability to shops and restaurants. He is in favor of an Aldi store because he feels it would work well with the development concept.

George Eldridge mentioned the Promenade was supposed to be a place for people to enjoy fine dining, upper end shops, and a place to walk around and relax. He stated bringing an Aldi to the development would not be an upper end shopping experience. His concern is bringing an Aldi to the development would set a precedent for other retail stores such as a dollar stores, tire stores, dry cleaners, and fast food. He does not have a problem with any of these types of stores but feels they do not fit the original concept that were presented by the developer and approved by the city commission.

Patrina Hensley mentioned the Promenade was presented by the developer as a concept where you could live, work and play. She stated The Promenade was never presented to offer conveniences but to offer sixty-two acres of office space, housing, retail, and restaurants. A grocery store does not fit into that description and was not part of the original concept and what was voted on by the commissioners.

Jeff Owen does not classify Aldi as high-end shopping. Concerning walkability, he feels only those living behind the development would walk to a grocery store.

Karl Langhorst has concerns if Aldi is no longer in business what other business would be suitable for the larger proposed building. He agrees with the proposed upscale shopping and dining plan and does not feel that Aldi fits that plan.

Donna Owen stated that an Aldi store is not what was proposed in the original plan for the Promenade Development.

Luc Luciano does not feel the Aldi store fits the concept of the Promenade development.

Marty Hensley is concerned with the walkable village concept being changed to something quite different. The issue is not with Aldi, instead it is with the change in the overall concept and maintaining the integrity of the project. He does not feel the building will fit in the Promenade development. The decision being made will impact people for years to come.

Brian Menhouse questioned if another grocery store is needed for the community. There is already a convenience store in the development, a grocery across the street and another proposed grocery down the street. He has a concern with changing the complexion of the project for something that is not necessary for the neighborhood. He is also concerned with the added traffic a grocery store will bring.

Carol Harvey questioned if another grocery store is needed. She stated more medical facilities would be beneficial so that people would not have to travel to other areas.

Karen O Sullivan commented that the issue is not with an Aldi, the issue is with the change in plan by the developer. The original plan described to the commission was for a village that is a walkable destination with green space, walking trails, golf carts, with a Hyde Park Square feel with small local entrepreneurs. Union was voted one of the best places to live in Kentucky and she feels everyone wants to keep it that way. She is concerned if an Aldi store is approved it could open the door for other stores to such as a Dollar store that is not part of the original plan.

Carol Oliver is opposed to an Aldi store in the Promenade. She agrees that the area was planned for a nice walking area to relax and enjoy with your neighbors. She does not feel many people will walk to a grocery store. She is also concerned with an increase of traffic.

Becky Hill is opposed to an Aldi store and is concerned with an increase of traffic.

Rick Harvey does not agree with a big box store coming to the Promenade. He feels an alternate location should be considered. He stated the development should remain what was originally designed for development. He feels a grocery store will increase traffic.

Angie Kessel stated she expected the Promenade to be an upscale development. She mentioned the proposed stores are just a repeat of what is already in Florence and questioned why new stores were not being brought to the area.

REBUTAL BY APPLICANT

Bob Koch mentioned there have been many planned changes that are consistent with the planning approval that was granted initially. A grocery store was part of the allowable uses. The infrastructure investment that has been made is in support of the walkability within the district. In terms of the intensity of the parking, the intensity of the pavement it is no different in component form than what was originally approved. He mentioned there is nothing about the Aldi submittal that does not have consistency. The use was allowed, the change is instead of two 9,000 square foot buildings sitting side by side there will be one 18,000 square foot building. The grocery store itself is fragmented and designed so that it will not give a singular overall look.

ANNOUNCEMENTS

Mayor Solomon announced the next Regular Commission Meeting will be held on Monday February 5, 2024, at 6:00 PM. The meeting will be at the city building 1843 Bristow Drive Union, Kentucky. Each Commissioner will have an opportunity to state their position on the Aldi store then a vote will be taken.

ADJOURNMENT

Mayor Solomon asked for a motion to adjourn. Commissioner Bine made a motion and Commissioner Garner seconded that motion. The meeting adjourned at 8:18 PM.

Motion approved 5-0

Approved:



Honorable Larry Solomon, Mayor

Attest:



Tammy Wilhoite, City Clerk