

PLANNING COMMISSION MINUTES

April 7, 2022

CASE NO. PUBLIC HEARING

CASE NO. 21-ZONE-0104

Request:	Change in zoning from R-4 to R-7, with Detailed District Development Plan with Binding Elements and Variance
Project Name:	Old Preston Highway Apartments
Location:	10410 and 10414 Old Preston Highway
Owner:	Skaggs Family Trust
Applicant:	Highgates Development
Representative:	Bardenwerper, Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	24 – Madonna Flood
Case Manager:	Dante St. Germain, AICP, Planner II

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

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

Agency Testimony:

01:37:25 Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

David Mindel, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

Brent Hackworth, Highgates Development, 7301 Monsie Circle, Louisville, Ky. 40219

Summary of testimony of those in favor:

01:48:18 Nick Pregliasco gave a power point presentation. The proposal is for multi-family housing development in close proximity to an area of Louisville that's growing very quickly (see recording for detailed presentation).

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01:57:38 David Mindel discussed the entrance, parking at the clubhouse, setbacks in rear, MSD approval, landscape buffering, karst survey, drainage, street trees, sewers and access easement (see recording for detailed presentation).

Nick Pregliasco showed renderings and elevations of the style and design of the buildings. The proposal will provide a variety of housing choices in the area. A traffic impact study has been conducted (see recording for detailed presentation).

Brent Hackworth said they can eliminate the parallel parking – it can be redesigned (see recording for detailed presentation).

The following spoke in opposition to this request:

Pat Miller, 4600 Waldon Drive, Louisville, Ky. 40229

Joseph Cslank, 4606 Waldon Drive, Louisville, Ky. 40229

Melinda Cslank, 4606 Waldon Drive, Louisville, Ky. 40229

Summary of testimony of those in opposition:

02:20:13 Pat Miller stated she has the following concerns: construction; need and traffic (see recording for detailed presentation).

02:29:55 Joseph Cslank is concerned about the sinkholes. If filled in, where will the water go? Melinda Cslank said there are snakes, mice and rats there now.

Joseph Cslank said the fire dept. may have trouble gaining access (see recording for detailed presentation).

Melinda Cslank is concerned about safety and heavy traffic (see recording for detailed presentation).

Rebuttal

02:35:50 Nick Pregliasco said there are four binding elements that address blasting, karst topography issues and sinkholes. There will be tree preservation to help with buffering (see recording for detailed presentation).

Davis Mindel discussed runoff and the reduction of drainage currently running off the site. There will be extensive geo-technical work performed on the foundations of every building (see recording for detailed presentation).

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02:41:53 Beth Stuber said the traffic impact study didn't find significant impact. No mitigation is warranted (see recording for detailed presentation).

Deliberation

00:00:00 Planning Commission deliberation.

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 R-7

On a motion by Commissioner Howard, seconded by Commissioner Mims, the following resolution based on the Plan 2040 and Staff Analysis, testimony and evidence provided today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is located across from Preston Highway, a major arterial at this location, and in proximity to a major employment center at Commerce Crossings; appropriate transitions between uses substantially different in scale and intensity will be provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal would provide new residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils are evident on the site. Severe, steep or unstable slopes are being preserved; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the site; no historic assets are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed zoning district, along with the developing commercial corridor at Preston Highway, would reasonably attract transit in the future; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is via Old Preston Highway, a local road at this location, in proximity to Preston Highway, a major arterial; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by bicycle and car. Transit may be located nearby along Preston Highway in the future as the commercial corridor develops and density increases. Access by pedestrians and people with disabilities will be improved as the sidewalk network along Old Preston Highway develops; Transportation Planning has approved the proposal; no direct residential access to high-speed roadways is proposed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, tree canopy will be preserved along the slopes and around the creek to the west. Required tree canopy will be provided on site; karst features are located on the site and will be mitigated by the applicant during construction; the floodplain is being avoided by the development on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would increase the variety of housing types in the neighborhood; the proposal would support aging in place by providing an increased variety of ownership options and price points in the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would encourage intergenerational mixed-income development by increasing the variety of housing options and price points in the neighborhood; the site is in proximity to employment opportunities and to neighborhood goods and services. The proposal is for higher density residential zoning. The site is located near existing activity centers; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would encourage the

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provision of fair and affordable housing in Louisville Metro by increasing the variety of ownership options and unit costs in the neighborhood; no existing residents will be displaced by the proposal; the proposed zoning district would permit innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to R-7, Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Clare, Howard, Mims, Price, Seitz and Lewis

NO: Commissioners Brown, Carlson and Daniels

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

Variance from Table 5.3.1 to allow a structure to encroach into the required street side yard setback along a private road (required: 15', requested: 7.5', variance: 7.5') (22-VARIANCE0036)

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis, testimony and evidence provided today was adopted.

WHEREAS, the requested variance will not adversely affect public health, safety or welfare as the decreased setback will not create a visual obstruction or impact sight lines; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the buildings are not yet constructed and will only be visible to persons on the private road; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the affected structure will be constructed according to building code, including all fire codes; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the requested variance is needed because a private road, in the form of a defined access easement, is being provided to a developed parcel that has no

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public road frontage. The private road would not be necessary if the affected parcel had public road frontage; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because of the developed parcel in the rear of the site which has no public road frontage; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring the reduction of the size of the affected structure so as to not encroach into the setback; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no construction has yet taken place and the variance is being sought at this time.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Table 5.3.1 to allow a structure to encroach into the required street side yard setback along a private road (required: 15', requested: 7.5', variance: 7.5') (22-VARIANCE0036).

The vote was as follows:

YES: Commissioners Clare, Howard, Mims, Price, Seitz and Lewis

NO: Commissioners Brown, Carlson and Daniels

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis, testimony and evidence heard today was adopted.

WHEREAS, Fishpool Creek runs through the site to the west. Required stream buffers are being provided. A small amount of steep slope is present on the site, which is being preserved. Tree canopy is being preserved around the creek and slopes. The site is on karst terrain, and karst features on the site will be mitigated during development; and

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WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, open space is being provided in compliance with the requirements of the Land Development Code; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision 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 Louisville Metro Planning Commission finds, the overall site design is in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the neighborhood by permitting higher-density multi-family housing near a developing commercial corridor and major arterial street; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040.

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

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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place

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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:

a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.

b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

d. An access easement in a form acceptable to the Planning Commission legal counsel shall be created granting access to the property located at 10412 Old Preston Highway as shown on the approved development plan 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.

e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 7, 2022 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.

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.

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7. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.

8. A qualified geotechnical consultant shall perform a full Karst reconnaissance and report to locate as many Karst features as possible prior to construction. A record of this survey shall be filed with Planning and Design Services within 30 days of completion of the survey.

9. A qualified geotechnical consultant's services be retained during construction to call if/when sinkholes are encountered. Care shall be taken during earthwork to investigate and properly remediate potential sinkholes, per the geotechnical engineer's recommendations.

10. The surface shall be thoroughly proof rolled after cutting and before placing fill.

Condition of Approval:

1. The applicant shall remove the parallel parking and submit a new site plan depicting no parking along the 30' access easement.

The vote was as follows:

YES: Commissioners Clare, Howard, Mims, Price, Seitz and Lewis

NO: Commissioners Brown, Carlson and Daniels

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

PLANNING COMMISSION MINUTES
March 17, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0104

Request:	Change in Zoning from R-4 to R-7, with Detailed District Development Plan with Binding Elements
Project Name:	Old Preston Highway Apartments
Location:	10410 & 10414 Old Preston Highway
Owner:	Skaggs Family Trust
Applicant:	Highgates Developments
Representative:	Mindel Scott & Associates
Jurisdiction:	Louisville Metro
Council District:	24 – Madonna Flood
Case Manager:	Dante St. Germain, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:05:55 Dante St. Germain explained the case needed to be continued because revisions to the plan prompted a variance request and notices have to be sent out again.

The applicant's representative, Paul Whitty, confirmed that the case needed to be continued to the April 7, 2022 Planning Commission meeting.

Commissioner Carlson stated concerns with the case being continued several times already. Dante St. Germain explained that the case had a technical issue regarding transportation with the plan that has now been resolved, and the noticing issue is currently the only reason for this continuance.

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.

On a motion by Commissioner Howard, seconded by Commissioner Sistrunk, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** 21-ZONE-0104 to the **April 7, 2022 Planning Commission** meeting.

PLANNING COMMISSION MINUTES
March 17, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0104

The vote was as follows:

YES: Commissioners Mims, Brown, Howard, Clare, Daniels, Sistrunk, Seitz, Price, and Lewis

NO: None

ABSTAIN: Commissioner Carlson

ABSENT: None

PLANNING COMMISSION MINUTES
March 3, 2022

PUBLIC HEARING
CASE NO. 21-ZONE-0104

Request:	Continued from 02/03 PC – Change in Zoning from R-4 to R-7, with Detailed District Development Plan with Binding Elements
Project Name:	Old Preston Highway Apartments
Location:	10410 & 10414 Old Preston Highway
Owner:	Skaggs Family Trust
Applicant:	Highgate's Development
Representative:	Mindel Scott & Associates
Jurisdiction:	Louisville Metro
Council District:	24 – Madonna Flood
Case Manager:	Dante St. Germain, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:08:15 Dante St. Germain explained that the case needed to be continued to the next Planning Commission meeting due to a transportation problem with the plan.

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On a motion by Commissioner Howard, seconded by Commissioner Mims, the following resolution was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** case 21-ZONE-0104 to the **March 17, 2022** Planning Commission meeting.

The vote was as follows:

YES: Commissioners Mims, Brown, Howard, Carlson, Clare, Daniels, Seitz, Sistrunk, Price and Lewis.

NO: No one.

ABSTAIN: No one.

ABSENT: No one.

PLANNING COMMISSION MINUTES

February 3, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0104

Request:	Change in Zoning from R-4 to R-7, with Detailed District Development Plan with Binding Elements
Project Name:	Old Preston Highway Apartments
Location:	10410 & 10414 Old Preston Highway
Owner:	Skaggs Family Trust
Applicant:	Highgates Development
Jurisdiction:	Louisville Metro
Council District:	24 – Madonna Flood
Case Manager:	Dante St. Germain, AICP, Planner II

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

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Agency Testimony:

03:17:14 Dante St. Germain explained why staff feels the case needs to be continued regarding an issue with an easement. John Talbott said they had no issue with continuing the case.

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.

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** 21-ZONE-0104 to the **March 3, 2022** Planning Commission meeting.

The vote was as follows:

YES: Commissioners Mims, Brown, Howard, Carlson, Daniels, Price, Seitz, Sistrunk, and Lewis.

NO: No one.

ABSENT: Commissioner Clare.

PLANNING COMMISSION MINUTES

February 3, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0104

Request: Change in Zoning from R-4 to R-7, with Detailed District
Development Plan with Binding Elements
Project Name: Old Preston Highway Apartments
Location: 10410 & 10414 Old Preston Highway
Owner: Skaggs Family Trust
Applicant: Highgates Development
Jurisdiction: Louisville Metro
Council District: 24 – Madonna Flood
Case Manager: Dante St. Germain, AICP, Planner II

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On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** 21-ZONE-0104 to the **March 3, 2022** Planning Commission meeting.

The vote was as follows:

YES: Commissioners Mims, Brown, Howard, Carlson, Daniels, Price, Seitz, Sistrunk, and Lewis.

NO: No one.

ABSENT: Commissioner Clare.

PLANNING COMMISSION MINUTES

February 3, 2022

BUSINESS SESSION

CASE NO. 4 Binding Element Appeal

Request: Binding Element Appeal – 14801 Bush Farm Road
Case Manager: Laura Ferguson, Jefferson County Attorney's Office

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

03:20:20 Laura Ferguson presented the case. The citation was issued on December 2, 2021 and was appealed by the property owner (see recording for detailed presentation.) Ms. Ferguson stated the site is now in compliance and recommended upholding the citation but waiving the fine.

The following spoke in support of this request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Summary of testimony of those in support:

03:26:54 Steve Porter said he agreed with Laura Ferguson's recommendation.

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.

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

RESOLVED that the Louisville Metro Planning Commission does hereby uphold the citation and set aside the fine for the site at 14801 Bush Farm Road, and direct the county attorney draft a final order, based on testimony heard today.

The vote was as follows:

YES: Commissioners Mims, Brown, Seitz, Howard, Carlson, Daniels, Price, Sistrunk, and Lewis.

NO: No one.

ABSENT: Commissioner Clare.