

## PLANNING COMMISSION MINUTES

February 3, 2022

### PUBLIC HEARING

CASE NO. 21-ZONE-0085

Request: Change in Zoning from R-4, OR, C-1, & C-2 to R-5A with a Waiver  
Project Name: LDG on Cane Run Road  
Location: 4516, 4524, & 4518 Cane Run Road  
Owner: Cane Run Properties LLC, Nutstreams LLC, & LDG Land Holdings LLC  
Applicant: LDP  
Representative: Dinsmore & Shohl LLP  
Jurisdiction: Louisville Metro  
Council District: 1 – Jessica Green  
Case Manager: **Joel Dock, AICP, Planning Coordinator**

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:**

02:44:18 Joel Dock presented the case and showed a Power Point presentation (See staff report and recording for detailed presentation.)

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

Cliff Ashburner, Dinsmore and Shohl, 101 South 5th Street, Suite 2500, Louisville, KY 40202

Derek Triplett, Land Design & Development, 503 Washburn Ave, Louisville, KY 40222

Michael Gross, LDG Development, 1469 S. 4<sup>th</sup> Street, Louisville, KY 40208

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

02:51:49 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a PowerPoint presentation (see recording for detailed presentation.)

02:57:44 Derek Triplett went into more detail on the proposed development plan (see recording for detailed presentation.)

03:00:27 Cliff Ashburner continued the presentation.

Commissioner Daniels asked how many bedrooms the proposed buildings would have. Michael Gross said they would all be three- and four-bedroom units.

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Commissioner Carlson asked if the trees in the landscaping would be preserved or if they would be new plantings. Cliff Ashburner said the north quarter would have some new planting and further south would have more preservation. Derek Triplett went into more detail on the landscaping and how they would preserve the trees. Mr. Triplett said the site is over 50% tree so they would have to preserve 20% of the tree canopy because of the Land Development Code.

Commissioner Daniels asked if these were going to be affordable housing units. Michael Gross said they are proposing to do 100% of these units as affordable housing.

**03:09:12** Commissioners' 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.**

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

### Change in Zoning:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the proposal is located along a major arterial roadway served by public transit near major employment and activity centers; and appropriate transition between uses that are substantially different in scale and intensity or density of development will be provided. The site adjoins properties of similar densities and provides an appropriate transition from the major roadway through slightly higher densities to lower densities to the rear; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the subject property is mostly vacant. The 2 residences that appear on site will be removed, but 106 dwellings will be provided to make-up for the removal of these 2 properties; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because environmental impacts will be mitigated through the district development plan and construction plan approval. Areas will contain drainage, floodplain compensation, and tree canopy preservation; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the site does not appear to contain distinctive cultural features and tree canopy will be preserved as required by the LDC;

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and the site does not appear to contain distinctive cultural or historical features. Structures to be removed are not historically significant; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the proposal is located along a major arterial roadway served by public transit near major employment and activity centers. TARC routes 19 & 63 serve the site and pedestrian connections will be provided. These public transit routes connect the site with nearby activity centers and amenities; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because access is available via an arterial roadway which is a high traffic roadway. Access does not result in the use of local roadways; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the proposed district encourages mobility choice as TARC routes #19 & 63 serve the site; and the proposed district supports ridership of transit as it places increased density along TARC routes 19 & 63; and all transportation improvements required of the development will be made to reduce negative impact on the transportation network, including curb reduction and sidewalk repair and installation; and all transportation improvements required of the development will be made to reduce negative impact on the transportation network, including curb reduction and sidewalk repair and installation; and all transportation improvements required of the development will be made to reduce negative impact on the transportation network, including curb reduction and sidewalk repair and installation; and no access to high speed roadways is proposed or provided for individual units; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because the proposal appears to have adequate levels of connection to utilities based on surrounding development; and the proposal appears to have access to an adequate supply of potable water and water for fire-fighting purposes; and preliminary plan approval has been received by MSD to ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because tree canopy preservation will be provided as required by the LDC, which recognizes the existing tree canopy on site; and the subject site is not in an area of karst potential. Stormwater drainage and floodplain compensation will be provided; and preliminary plan approval has been received by MSD to mitigate negative development impacts to the integrity of the regulatory floodplain; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposed district allows for a variety of housing styles that support alternate forms and styles of housing in an area that

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supports a higher density of development, and that is conveniently located to support transit ridership as the site adjoins single-family and multi-family development and served by public transit; and the proposed district supports and promotes housing options and environments that support aging in place as a wider variety of development schemes are available to provision senior, affordable, or intergenerational housing and such housing is located along public transit and supportive facilities; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal allows for mixed-incomes and mixed-use development in an area that supports a variety of land use densities and intensities at convenient locations. Connectivity to public ways, sidewalks, and transit is available and will be provided; and the proposed district is located within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services which can be accessed via public transit; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because the proposed district allows for the incorporation of housing options in an area that supports multi-family development. It encourages the provision of fair and affordable housing by allowing for a variety of ownership options and unit costs throughout Louisville Metro; and the existing vacant residences will be removed to allow for the development of 106 multi-family residential dwelling units. No displacement will occur, and additional housing will be provided and enabled by the zoning change requested; and the incorporation of this district in the area encourages a variety of housing types and occupancy types within the area which increases the ability to provision clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing as the district allows for reduced lot sizes and increased density near services, amenities, and employment which are conveniently accessible.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that Louisville Metro Council **APPROVE** the change in zoning for case 21-ZONE-0085 from R-4, OR, C-1 and C-2 to R-5A, multi-family residential for the property described in the staff report and application at 4516, 4524, & 4518 Cane Run Road.

**The vote was as follows:**

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

**NO: No one.**

**ABSENT: Commissioner Clare.**

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

**Waiver of Land Development Code, section 10.2.4 to encroach upon the 25' landscape buffer area between the subject site and an adjacent C-2 development site:**

**WHEREAS**, the Louisville Metro Planning Commission finds the waiver will not adversely affect adjacent property owners as the waiver is the result of accommodating the drive/cross access easement shared between owners/operators of commercial businesses and the adjacent property is zoned for a higher intensity; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040. Community form Goal 1, Policy seeks to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Policy 12 calls for the parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. The encroachment will not reduce the required plantings or screening requirements and will continue to ensure that visual intrusions are minimized; 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 as the waiver is the result of accommodating the drive/cross access easement shared between owners/operators of commercial businesses and the adjacent property is zoned for a higher intensity; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the encroachment will not reduce the required plantings or screening requirements and will continue to ensure that visual intrusions are minimized.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver of Land Development Code, section 10.2.4 to encroach upon the 25' landscape buffer area between the subject site and an adjacent C-2 development site, based on the staff report and testimony heard today.

**The vote was as follows:**

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

**NO: No one.**

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**ABSENT: Commissioner Clare.**

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

#### **Revised Detailed District Development Plan:**

**WHEREAS**, the Louisville Metro Planning Commission finds the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. All tree canopy required by the Land development code will be provided, MSD preliminary approval has been received to minimize adverse impacts to water courses, and the site does not appear to contain any cultural or historic resources; and

**WHEREAS**, the Commission further finds provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. Curbs will be removed and sidewalks repaired and/or installed within the right-of-way of the property frontage. Internal walks and recreational walks will be provided to connect with public sidewalks; and

**WHEREAS**, the Commission further finds open space for recreation will be provided as required by the LDC and has been demonstrated to comply with the LDC on the development plan; and

**WHEREAS**, the Commission further finds 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 Commission further finds the proposal is compatible with the overall character of the area and design of the form district. The proposal calls for attached sidewall, two-story dwellings that meet all design and dimensional standards of the LDC; and

**WHEREAS**, the Commission further finds the proposed development plan conforms to the Comprehensive Plan as evidenced in the Plan 2040 Staff Analysis and all relief requested from the Land Development Code appears to be adequately justified.

#### **Proposed 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

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- 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 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) is requested:
    - a. The development plan must receive full construction approval from Develop Louisville, 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. A minor subdivision plat or legal instrument 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.
    - d. 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.
    - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
    - f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 3, 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

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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.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan for case 21-ZONE-0085 along with the Binding Elements on pages 15 and 16 of the staff report with the revision of Binding Element #4f to include today's Planning Commission meeting date, February 3, 2022, based on the staff report and 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.**