

PLANNING COMMISSION MINUTES
May 12, 2022

BUSINESS SESSION

CASE NO. 21-ZONE-0102

Request: Change in zoning from R-4 to R-7 and C-2 with landscape waivers and a variance
Project Name: Freys Hill Multi-Family
Location: 3323 & 3325 Freys Hill Road
Owner: Deerfield Co. Inc.
Applicant: LDG Multi-family LLC
Representative: Dinsmore and Shohl PLLC. & Sabak Wilson and Lingo
Jurisdiction: Louisville Metro
Council District: 17- Markus Winkler
Case Manager: Julia Williams, AICP, Planning Supervisor

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.)

Discussion

00:09:59 Brian Davis polled the commissioners to see if Commissioners Clare, Price and Sistrunk watched the April 21, 2021 (last 2 cases) video in advance of this meeting (see recording for detailed presentation).

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.

Change in zoning from R-4 to R-7 and C-2

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the testimony heard at the April 21, 2022 Planning Commission meeting and the Plan 2040 Staff Analysis was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed higher intensity district is located along a collector roadway with sidewalk connectivity to TARC service nearby along an arterial. There is also connectivity to activity centers; the proposed district is in an area that maintains higher intensities and densities along both Freys Hill Road and the nearby Westport Road; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the vacant property and former utility building is proposed to be rezoned to a district providing housing at appropriate locations. The site is connected to the activity center along Westport Road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the development site is mainly vacant. Little Goose Creek runs along a corner of the property where the buffer is being provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the site does not contain distinctive cultural or natural features; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed higher intensity use is connected to a nearby transit corridor and activity center zoned for a variety of goods and services. The site is connected to an efficient public transportation system along Westport Road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the proposed district is located along a collector roadway where a mix of densities exist and where an activity center exists at the intersection of Freys Hill Road and Westport Road (an arterial roadway). Having mixed intensities and densities would not create a significant nuisance with respect to accessing the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the subject property is easily accessible by bicycle, car, transit, pedestrians and people with disabilities as public sidewalks and transit service are available and connectivity from the site to activity centers is readily available; Transportation Planning has preliminarily approved the proposal. Freys Hill will be widened to accommodate 3 lanes across the sites' frontage to Westport Road; the roadway fronting the development site is intended to serve high volumes of vehicular traffic, public sidewalks are available, and transit service is accessible. The development is appropriately located to take advantage of the existing transportation network. Freys Hill will be widened to accommodate 3 lanes across the sites' frontage to Westport Road; no direct access to high speed roadways is provided for individual units. Two access points to the site will be provided; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the site will be served by existing utilities or capable of being served by public or private utility extensions; the development will have an adequate supply of potable water and water for firefighting purposes; MSD has preliminarily approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because,

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the site does not appear to contain unique landscape characteristics. The treed area of the site is indicated as being preserved; the proposal will not result in groundwater issues; the existing stream will not be disturbed as the full buffer is being provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed district provides for appropriately located high density development between major transit corridors in the Neighborhood form district. The district remains consistent with the pattern of the corridor in provisioning for alternative forms of housing; the proposed district and location support aging in place as distance and transit connectivity to nearby services and amenities reduce travel time to essential services; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal continues the existing pattern of mixed-intensity and density along the corridor that is connected to the neighborhood and nearby centers; the subject site and proposed district provides safe and convenient access to employment opportunities and amenities as distance and transit connectivity to nearby services and amenities reduce travel time to essential services, employment, and amenities in the area and throughout Louisville Metro; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed district encourages fair and affordable housing by allowing a variety of ownership options and unit costs throughout Louisville Metro. The district expands opportunities for people to live in quality, variably priced housing in locations of their choice by enabling the provision of affordable housing in dispersed locations throughout Louisville Metro; the proposed district allows for an increase in residential occupancy where none currently exists on the site; the proposed zoning district allows for a variety of styles and methods of housing to provision the requested density and fair and affordable housing.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4 to R-7 and C-2 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Sistrunk and Howard

NOT PRESENT AND NOT VOTING: Commissioners Brown and Lewis

ABSTAINING: Commissioner Price

Variance from 5.3.1 to permit a shared access road to encroach into the 3' side yard setback (21-VARIANCE-0142)

On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the testimony heard at the April 21, 2022 Planning Commission meeting and the Standard of Review and Staff Analysis was adopted.

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the proposed encroachment is internal to the site and is due to the necessity of a second access to the site; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity because the proposed encroachment is internal to the site and is due to the necessity of a second access to the site; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public because the proposed encroachment is internal to the site and is due to the necessity of a second access to the site; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations because the proposed encroachment is internal to the site and is due to the necessity of a second access to the site; and

WHEREAS, the requested variance arises from special circumstances where the second access needs to be expanded to accommodate two-way traffic; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the second entrance would not be able to be constructed and would limit the amount of units able to be constructed; and

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WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the location of the existing access on the adjacent lot.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from 5.3.1 to permit a shared access road to encroach into the 3' side yard setback (21-VARIANCE-0142).

The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Sistrunk and Howard

NOT PRESENT AND NOT VOTING: Commissioners Brown and Lewis

ABSTAINING: Commissioner Price

Waivers:

1. Waiver from 10.2.4 to allow an easement to overlap an LBA by more than 50% along the north and east property lines as shown on the development plan (21-WAIVER-0130)

2. Waiver from 10.2.4 to permit a shared access road to encroach into the 25' LBA as shown on the development plan (21-WAIVER-0130)

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis and testimony heard at the April 21, 2022 Planning Commission meeting was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners since the planting and screening materials are already met with the existing vegetation along the south property line. The tree requirements will still be installed in all other areas of the plan where there is an easement or pavement encroachment; and

WHEREAS, Community Form Goal 1, Policy 9 calls 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. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees,

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walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. The planting and screening materials are already met with the existing vegetation along the south property line. The tree requirements will still be installed in all other areas of the plan where there is an easement or pavement encroachment; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the planting and screening materials are already met with the existing vegetation along the south property line. The tree requirements will still be installed in all other areas of the plan where there is an easement or pavement encroachment; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the planting and screening materials are already met with the existing vegetation along the south property line. The tree requirements will still be installed in all other areas of the plan where there is an easement or pavement encroachment.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver from 10.2.4 to allow an easement to overlap an LBA by more than 50% along the north and east property lines as shown on the development plan (21-WAIVER-0130) and the waiver from 10.2.4 to permit a shared access road to encroach into the 25' LBA as shown on the development plan (21-WAIVER-0130).

The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Sistrunk and Howard

NOT PRESENT AND NOT VOTING: Commissioners Brown and Lewis

ABSTAINING: Commissioner Price

On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis and testimony heard at the April 21, 2022 Planning Commission meeting was adopted.

Detailed District Development plan with binding elements

WHEREAS, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the site is located within 1000' of a public park and the site provides at least 10% of the site as open space; 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 and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots generally meet all required setbacks; and

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements **ON CONDITION** that the only dumpster shown on the plan encroaching in the buffer area be relocated outside the buffer area:

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 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

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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) is requested:

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

b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Freys Hill Road to provide a total of 40 feet from the centerline and to consolidate the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

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

e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 21, 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.

7. The proposed 3 lane section will be completed from Westport Road to the sites south property line.

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8. No more than 199 building permits shall be issued until at least 2 separate access driveways can be connected to the existing roadways.

9. The gates shown on the development plan shall comply with safety requirements for gated connections as determined by Louisville Metro Public Works and the relevant emergency authorities (fire, police, EMS).

The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Sistrunk and Howard

NOT PRESENT AND NOT VOTING: Commissioners Brown and Lewis

ABSTAINING: Commissioner Price