

PLANNING COMMISSION MINUTES
August 5, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0001

Project Name: Aiken North Subdivision
Location: 16907, 16907R, 16909 & 17401 Aiken Road
Owner(s): Katherine Kirzinger & John Curry, Richard & Anne Gillespie & Robert Kirzinger
Applicant: Perfection Builders
Jurisdiction: Louisville Metro
Council District: 19 – Anthony Piagentini
Case Manager: Joel P. Dock, AICP, Planner II

NOTE: COMMISSIONER SEITZ LEFT AT ~6:54 AND DID NOT VOTE ON THIS CASE

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:

04:32:37 Joel Dock discussed the case summary, standard of review and staff analysis from the staff report (see recording for detailed presentation).

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
David Mindel, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

Summary of testimony of those in favor:

John Talbott stated all the binding elements were negotiated and thoroughly discussed with Commissioner Brown (he approved).

John Talbott gave a power point presentation. There is significant growth in the proposed area (see recording for detailed presentation).

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John Talbott summarized the traffic impact study (see recording for detailed presentation).

The following spoke in opposition to this request:

Chris Dickson, 1421 Rutland Club Court, Louisville, Ky. 40245

Summary of testimony of those in opposition:

Chris Dickson discussed other developments in the area. Chair Lewis explained that the other developments have no bearing on whether this proposal is approved or denied.

Chris Dickson stated there are no compelling reasons to change the zoning (see recording for detailed presentation).

The following spoke neither for nor against the request:

Scott Jones, 2704 Flat Rock Road, Louisville, Ky. 40245
David Adams, 2701 Flat Rock Road, Louisville, Ky. 40245

Summary of testimony of those neither for nor against:

Scott Jones asked questions regarding the pond, detention basin in ravine and blueline stream in the Floyds Fork DRO (see recording for detailed presentation).

David Adams, president of the Hermitage Ridge Homeowners' Association, asks what impact the proposed 866 homes will have on the Hermitage neighborhood. The road is falling apart and will not be able to handle more traffic (see recording for detailed presentation).

Rebuttal

John Talbott explained when the entrances would be built (see recording for detailed presentation).

David Mindel explained the detention basin and meeting MSD standards (see recording for detailed presentation).

Deliberation

Planning Commission deliberation (see recording for detailed presentation).

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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, single-family residential to PRD, planned residential development

On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution based on the Plan 2040 Staff Analysis and the applicant's testimony was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district allows for a density no greater than 7.26 du/ac which matches the density permitted under an R-5, single-family residential district. While the proposal is not for high density development, the site is located within proximity to goods, services, and employment where demand and adequate infrastructure exists or is planned; the proposed district is compatible with adjacent land uses as the PRD district provides for a compatible diversity of housing options adjacent to all types of residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the change in zoning will result in the development of housing at a location near activity centers or employment; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, Floyds Fork is along the northwestern boundary of development site, an intermittent stream bisects the site, and cemeteries, wetlands, slopes and karst features are present on the site. Environmental or archaeological reports have been provided with this application and published with the public hearing material. Required buffers will be provided for Floyds Fork and each cemetery. Steep slopes will generally be avoided and any remediation necessary for disturbance of slope or karst features will be provided as described in the karst and slope reports. Open space will be provided as required by the Planned Residential Development District; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, Floyds Fork is along the northwestern boundary of development site, an intermittent stream bisects the site, and cemeteries, wetlands, slopes and karst features are present on the site. Environmental

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or archaeological reports have been provided with this application and published with the public hearing material. Required buffers will be provided for Floyds Fork and each cemetery. Steep slopes will generally be avoided and any remediation necessary for disturbance of slope or karst features will be provided as described in the karst and slope reports. Open space will be provided as required by the Planned Residential Development District; Preservation of historic sites will be provided as cemeteries were identified and boundaries delineated. Required buffers and development will occur in accordance with the Land Development Code; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed district allows for a density no greater than 7.26 du/ac which matches the density permitted under an R-5, single-family residential district. While the proposal is not for high density development, the site is located within proximity to goods, services, and employment. All sidewalks and roadway improvements to encourage transit-oriented development will be provided to encourage an efficient public transportation system which currently terminates west of I-265 in the Eastpoint business park; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the development site is achieved by collector level roadway through areas of similar density to the proposed development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, Aiken Road to the subject site from Old Henry Road contains sidewalk gaps that will be improved by adjacent development, but some gaps may remain as a result of existing subdivision development along the frontage that did not provision sidewalks with their development. The development site will, however, provision all required improvements within and abutting the development site to encourage access by bicycle, car, transit, pedestrians and people with disabilities; the development will provide all required improvements within and abutting the development site to improve access to the subject site along Aiken Road; all improvements will occur in accordance with long-range transportation plans, traffic impact studies prepared for this application, and level of mobility criteria for all modes of travel; no direct access to high speed roadways is provided for individual dwellings; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, utilities will be available or capable of being provided to serve the development site; an adequate supply of potable water and water for fire-fighting purposes will be available. No on-lot sewage disposal or private water supply will be used; MSD has reviewed and provided preliminary plan approval to ensure that all development has adequate means of

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sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, open space as required by the Planned Residential District will be provided, as well as the preservation of existing tree canopy and overall tree canopy per Chapter 10 of the Land Development Code. Water course will also be buffered as required; Floyds Fork is along the northwestern boundary of development site, an intermittent stream bisects the site, and cemeteries, wetlands, slopes and karst features are present on the site. Environmental or archaeological reports have been provided with this application and published with the public hearing material. Required buffers will be provided for Floyds Fork and each cemetery. Steep slopes will generally be avoided and any remediation necessary for disturbance of slope or karst features will be provided as described in the karst and slope reports. Open space will be provided as required by the Planned Residential Development District; MSD has reviewed and provided preliminary plan approval to mitigate negative development impacts to the integrity of the regulatory floodplain. Required buffers for water courses will be provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed district allows for the provisioning of compatible alternative housing styles and lotting patterns to the traditional patterns that are generally found in the area. The district allows for a variation of detached-, semi-detached, and attached-unit development that will be developed to reflect the pattern of the form district - The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages, incomes and abilities; the proposed district promotes housing options and environments that support aging in place as smaller lots and dwellings can be constructed which reduce the cost of maintenance and construction. Medical services are located within proximity; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed district promotes inter-generational, mixed-income and mixed-use development as a wider array of housing choices can be provided in the PRD district than traditional single-family residential districts to allow occupants to live near employment opportunities; the proposal will provide alternative housing choices which increases demand for public transit and multi-modal access to employment opportunities nearby. Aiken Road to the subject site from Old Henry Road contains sidewalk gaps that will be improved by adjacent development, but some gaps may remain as a result of existing subdivision development along the frontage that did not provision sidewalks with their development. The development site will, however, provision all required improvements within and

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abutting the development site to encourage access by bicycle, car, transit, pedestrians and people with disabilities; 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 provides relief from the traditional standards of the R-4 district to allow greater variation in lot sizes and housing styles; the proposed district allows for an increase in residential occupancy on a site that is vacant; the proposed district allows for innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing. It also allows for a deviation from the limitations of the R-4 district in meeting demand for 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 PRD, Planned Residential Development on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Mims, Sistrunk and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz

Detailed District Development/Major Preliminary Subdivision Plan (21-MSUB-0001)

On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the Standard of Review and Staff Analysis and applicant's testimony was adopted.

WHEREAS, the conservation of natural resources on the property proposed for development will be provided as Floyds Fork is along the northwestern boundary of development site, an intermittent stream bisects the site, and cemeteries, wetlands, slopes and karst features are present on the site. Environmental or archaeological reports have been provided with this application and published with the public hearing material. Required buffers will be provided for Floyds Fork and each cemetery. Steep slopes will generally be avoided and any remediation necessary for disturbance of slope

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or karst features will be provided as described in the karst and slope reports. MSD has also reviewed and provided preliminary plan approval 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. Open space as required by the Planned Residential District will be provided, as well as the preservation of existing tree canopy and overall tree canopy per Chapter 10 of the Land Development Code. Water course will also be buffered as required; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. Aiken Road to the subject site from Old Henry Road contains sidewalk gaps that will be improved by adjacent development, but some gaps may remain as a result of existing subdivision development along the frontage that did not provision sidewalks with their development. The development site will, however, provision all required improvements within and abutting the development site to encourage access by bicycle, car, transit, pedestrians and people with disabilities; and

WHEREAS, sufficient open space is provided as open space as required by the Planned Residential District will be provided, as well as the preservation of existing tree canopy and overall tree canopy per Chapter 10 of the Land Development Code. Water course will also be buffered as required; 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 proposal is compatible with the scale and site design of the area and future growth of the area as envisioned by the Neighborhood form district. The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages, incomes and abilities. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood if the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to, large lot single family developments with cul-de-sacs, traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero-lot line neighborhoods with open space, and high-density multi-family housing; and

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WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040. The development site is located within proximity to goods, services, and employment where demand and adequate infrastructure exists or is planned. The proposal provisions compatible alternative housing styles and lotting patterns. The proposal further provides for a variation of detached-, semi-detached, and attached-unit development that will be developed to reflect the pattern of the form district. The proposal promotes inter-generational, mixed-income and mixed-use development as an alternative housing style is being provided near employment opportunities and compatibility with the existing and future growth of the area.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development/Major Preliminary Subdivision Plan (21-MSUB-0001), **SUBJECT** to the following 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 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. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
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) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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.

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d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.

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

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 inactive cemeteries on Lot 880 and 881 shall be preserved and maintained as described in Chapter 4.4.6 of the Land Development Code. Ownership and maintenance of the cemetery shall be transferred to the homeowners' association. A deed restriction in a form approved by the Planning Commission legal counsel shall be recorded acknowledging the location, site, ownership and maintenance of the cemetery.

8. The applicant shall submit a Tree Preservation Plan for approval by Planning and Design staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

9. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

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10. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.

11. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

12. All street signs shall be installed by the Developer and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

13. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.

14. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.

15. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.

1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.

2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.

3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.

16. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.

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17. At the time the developer turns control of the homeowners' association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners' association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.

18. The roadway connection from the development site to the existing Flat Rock Road right of way/pavement as shown on the approved development plan shall be constructed at the applicants, developers, or property owners' expense. Said Construction shall be completed at or before the dedication and recording of any roadways or lots west of the intersection of Flat Rock Road and Court "B".

19. The developer shall construct its north-eastern proposed entrance to Aiken Road prior to recording any lot.

20. The developer shall construct its second south-western entrance (near Johnson Road) prior to release of the subdivision bond and no later than the 330th lot going to record, (with Flat Rock Road being available as a second entrance), provided a commercially reasonable damage bond is put in place for Flat Rock Road. The damage bond will be released upon completion of the second southwestern entrance (near Johnson Road) and following post-inspection to determine if any claim on the damage bond is necessary for Flat Rock Road. Additionally, if permitted, developer shall place a temporary sign in the right of way at Aiken Road and Flat Rock Road prohibiting construction traffic.

21. The developer shall construct two left turn lanes at the Aiken Road/Arnold Palmer intersection prior to recording any lot, with the developer being given a credit for the System Development Charge on the first 114 lots.

22. A 15' voluntary buffer shall be provided as shown on the approved district development plan abutting lots located in the hermitage Ridge Farms Subdivision (PB 37, PG 8-9). Trees at least 4 inches in caliber or greater shall be preserved, unless listed in the prohibited plant list of the Land Development Code. This does not preclude the installation of fences or necessary utilities within the buffer, and the voluntary buffer is not subject to landscape/utility overlap provisions of the Land Development Code. Brush and invasive plant species are specifically authorized for removal. These requirements must be included in the restrictions of the subdivision as approved by the Planning Commission's legal counsel.

23. In addition to the minimum requirements of the Land Development Code, the developer shall install evergreen trees along the property line abutting the properties known as 2708, 2713, 2716, 2717, 2720, 2721, 2724, and 2725 Flat Rock Road in the Hermitage Ridge Subdivision. The total number of evergreen trees planted shall equal 3

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evergreen trees per 50 linear feet. The developer shall locate these additional trees to provide the greatest possible buffer for the aforementioned Flat Rock landowners to fill gaps in the tree line. Tree provided per this binding element shall be shown and approved with the landscape and/or tree preservation plan

24. The developer shall not use Flat Rock Road for construction ingress or egress, except in the case of emergency.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Mims, Sistrunk and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz