

PLANNING COMMISSION MINUTES
September 2, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0053

Request: Change in zoning from R-6 to UN, amendment to record plat, variance, waiver and development plan
Project Name: De Luna Villaflor Subdivision
Location: 3133 Bushmill Park
Owner(s): Equity Trust Company
Applicant: Brentwood Properties
Representative(s): Miller-Wihry
Jurisdiction: Louisville Metro
Council District: 17 – Marcus Winkler
Case Manager: Joel P. Dock, 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:

01:50:42 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:

Clarisa De Luna, 11200 Cherry Lane, Louisville, Ky. 40223

Summary of testimony of those in favor:

Clarisa De Luna stated the HOA has approved all the plans. Commissioner Carlson asked Ms. De Luna if she would you be willing to raise the fire hydrant next door, even if there's a fee. Ms. De Luna said she wants to understand the costs of the subdivision improvements but will cooperate as much as she can (see recording for detailed presentation).

The following spoke in opposition to this request:

Jeff Disney, 3306 Freys Hill Road, Louisville, Ky. 40241

Summary of testimony of those in opposition:

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Jeff Disney said he lives in the Park Place Subdivision.

Jeff Disney read a letter from his attorney. The main objection is that the planned improvement to the lot proposed by the owner seeking the zoning change would be to place multiple residences on an individual lot, which is not in keeping with the plan for Park Place Subdivision. Also, if approved, it would be subject to the Deed of Restrictions (see recording for detailed presentation).

Rebuttal

Clarisa De Luna said the Homeowners' Association has reviewed and approved the plan (see recording for detailed presentation).

Deliberation

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-6 to UN

On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today 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 variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities; appropriate transition between uses that are substantially different in scale and intensity or density of development are not necessary as adjacent uses are similar in density and scale and do not require transition; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, additional residential options are being provided in an area containing a wide variety of options; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the site does not appear to contain any environmental constraints such as wet or highly permeable soils, severe, steep or unstable slopes/soils; 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; the site does not contain distinctive historic resources; 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 variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access is available through areas of similar intensity to the subject site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal will include sidewalks to encourage land uses that are accessible; the development will have no adverse impact on the transportation network; existing transportation facilities in addition to the required sidewalks to be provisioned provide adequate service; no access to high speed roadways is proposed or provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, subject properties are served by existing utilities, including water and sewage disposal; the development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as Metropolitan Sewer District MSD review and approval has been received; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the site does not contain unique characteristics as it is an infill lot within an existing development.; any hazard present, which there do not appear to be, will be mitigated as required by MSD or other agency responsible for the issuance of a building permit; no negative impacts to the floodplain are expected due to existing conditions; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed district allows for a variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities; the proposed district supports and promotes housing options and environments that support aging in place as the proposal provides another option to provision senior, affordable, or intergenerational housing; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal allows for consistent redevelopment on an infill lot to encourage inter-generational, mixed income and mixed-use development that is connected to the neighborhood and surrounding area; 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; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed district allows for the continuation of housing options in an area that supports a variety of residential options. It encourages the provision of fair and affordable housing by allowing for a variety of ownership options and unit costs throughout Louisville Metro; the proposed zoning district does not result in the displacement of residents; and the proposed district encourages a variety of housing types and occupancy types within the area to increase the production of fair and affordable housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-6, Multi-Family Residential to UN, Urban Neighborhood on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioners Peterson and Lewis

Variance from Land Development Code (LDC), section 5.3.1.C to reduce the side yard setback on both sides of the shared lot line between lots 1 & 2

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

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the setback does not impede the safe movement of pedestrians or vehicles or deprive adjacent property owners of access to maintain their properties; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the setback and attachment of homes is the pattern of development along the road frontage; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of pedestrians or vehicles deprive adjacent property owners of access to maintain their properties; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance allows development to occur which is consistent with the neighborhood; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or the same zone as the innovative subdivision regulations are no longer present in the land use regulations and the existing development was developed under those standards; 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 as it would deprive the applicant the ability to build homes consistent with adjacent development; 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 development has occurred.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Variance from Land Development Code (LDC), section 5.3.1.C to reduce the side yard setback on both sides of the shared lot line between lots 1 & 2.

The vote was as follows:

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

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NOT PRESENT AND NOT VOTING: Commissioners Peterson and Lewis

Waiver of LDC, section 7.8.60.B to allow less than 25' of frontage on a public or private street and more than 20 lots on a private street

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

WHEREAS, the waiver will not adversely affect adjacent property owners as the roadway pavement is 18' wide and the width of the lots are consistent with adjacent lots and home development; and

WHEREAS, the waiver will not violate related guidelines of Plan 2040 as Mobility Goal 1, Policy 1. promotes healthy lifestyles and reduce congestion, new development and redevelopment should provide for the movement of pedestrians, bicyclists and transit users, where appropriate. The proposal will allow for development which is consistent with these goals and would allow for infill development that is contextual appropriate in this area that can be safely accessed; 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 as the innovation subdivision standards under which the existing development occurred is no longer available for application in the Land Development Code; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as no individual would be capable of developing the few remaining infill lots consistently with the remainder of the neighborhood without the granting of this waiver.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Waiver of LDC, section 7.8.60.B to allow less than 25' of frontage on a public or private street and more than 20 lots on a private street.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioners Peterson and Lewis

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Detailed District Development Plan with Amendment to Record Subdivision Plat

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

WHEREAS, 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 conserved as the site is an infill lot that does not contain these sensitive features; and

WHEREAS, safe pedestrian and vehicular connectivity is being provided as required by the Land Development Code; and

WHEREAS, the provision of sufficient open space (scenic and recreational) to meet the needs of the proposal will be provided by rear and front yards; 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 compatible with nearby development as the proposal provides for attached units consistently with the existing development; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040 and generally conforms with the Land Development Code as the requested relief as been adequately justified to allow for development in an area where the standards applied to the evicting development are no longer available.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan with Amendment to Record Subdivision Plat **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

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designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. 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 Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.

b. A minor subdivision plat creating the lots as shown on the approved district development plan shall be recorded prior to issuance of any building permits, except that grading/clearing and foundation only permits may be issued to ensure the accuracy of property lines as they relate to common side walls for residential units. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.

c. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the September 2, 2021 Planning Commission public hearing. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.

3. 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.

4. 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.

5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioners Peterson and Lewis