

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
Case Number 21-ZONE-0013 Only  
November 29, 2021**

A meeting of the Louisville Metro Planning Commission was held on November 29, 2021 at 6:00 p.m. via Cisco Webex Video Teleconferencing.

**Commission members present:**

Marilyn Lewis, Chair  
Jeff Brown  
Jim Mims  
Rich Carlson  
Rob Peterson  
Patti Clare  
Lula Howard

**Commission members absent:**

Ruth Daniels  
Pat Seitz  
Te'Andre Sistrunk

**Staff Members present:**

Emily Liu, Planning and Design Director  
Joe Reverman, Planning and Design Assistant Director  
Brian Davis, Planning and Design Manager  
Julia Williams, Planning Supervisor  
Chris French, Planning Supervisor  
Dante St. Germain, Planner II  
Beth Stuber, Engineering Supervisor  
Faisal Al Zadjali, Engineer I  
Laura Ferguson, Legal Counsel

**The following matters were considered:**

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**CASE NO. 21-ZONE-0013**

Request: Change in Zoning from R-4 & C-1 to R-7, with Detailed District Development Plan and Binding Elements, and Variance

Project Name: KJS Multi-Family

Location: 4805 – 4907 Bardstown Road & 8004 Watterson Trail

Owner: KJS LLC

Applicant: KJS LLC

Representative: Mindel Scott & Associates

Jurisdiction: Louisville Metro

Council District: 22 – Robin Engel

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. (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 presented the case and showed a Power Point presentation (See staff report and recording for detailed presentation).

Commissioner Mims asked if it would be a shared access with the residual tracts. Dante St. Germain explained the two residual tracts would not be granted any access to Watterson Trail or Bardstown Road and would have to share the access points.

There was discussion on potential additional Binding Elements to the development plan.

Commissioner Carlson asked if there was sidewalk connectivity to the TARC stop on Bardstown Road. Dante St. Germain explained they are required to put together sidewalks across the Bardstown Road frontage.

In response to Commissioner Howard's question, Dante St. Germain went into more detail on the variance request.

There was discussion on the proposed setback.

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

Kathy Linares, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

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Diane Zimmerman, 12803 High Meadows Pike, Prospect, KY 40059

David Mindel, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

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

00:28:45 Kathy Linares, the applicant's representative, went into more detail on the zoning change request, variance request, and development plan (see video for detailed recording.) In response to Commissioner Carlson's question about the headlights affecting residential homes; Ms. Linares explained the distance of the residential homes exceeds the length that the beams would extend to, and they are providing an evergreen screening as well.

Commissioner Clare asked if there would be a fence or screening from the trees. Kathy Linares said they are not proposing a screen fence just the evergreen screen and explained the minimum height for any tree planted would be six feet. There was further discussion on screening.

In response to Commissioner Carlson's question if the traffic report included traffic generated from Hurstbourne Commons, Diane Zimmerman responded that it did.

In response to Commissioner Mims' and Commissioner Clare's question about the non-jurisdictional wetlands, David Mindel explained the classification process.

**The following spoke neither for nor against the request ("Other"):**

Jared Townes, Councilman Engel's Office, 601 W. Jefferson Street, Louisville, KY 40202

**Summary of testimony of those neither for nor against:**

01:19:43 Jared Townes, the Legislative Assistant for Councilman Engel, stated that they would like to request a Binding Element to limit the number of units to 350.

**The following spoke in opposition to this request:**

Jon Bingham, 8003 Portland Drive, Louisville, KY 40228

Sherry Lamothe, 8024 Watterson Trail, Louisville, KY 40291

Tony Ennis, 8026 Watterson Trail, Louisville, KY 40291

**Summary of testimony of those in opposition:**

01:23:40 Jon Bingham, representing some of the neighbors, provided testimony and pictures to show the proposed development was not in character with existing development around the area. Mr. Bingham feels there should be fewer units, limit three

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story buildings to interior buildings, and additional buffering should be provided along the property lines. They would be more supportive of the project if they were to request an R-6 change in zoning instead.

02:26:30 Tony Ennis stated concerns with traffic in the area, along with the roadway being too narrow.

**Rebuttal:**

02:28:21 David Mindel addressed the concerns from the opposition. Mr. Mindel said they feel the development adheres to the code and the improvements to Watterson Trail will mitigate traffic concerns.

There was detailed discussion about the existing fencing and screening. Mr. Mindel stated that they would agree to an eight-foot fence and they would still do the enhanced landscaping.

In response to Commissioner Clare's question about the basins, Mr. Mindel explained the choices for the basins.

Commissioner Mims asked about the right turn lane improvement and making it longer to provide more relief. Diane Zimmerman explained that based on the analysis, the distance proposed is adequate.

**03:13:55 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 motion by Commissioner Brown made, seconded by Commissioner Howard, the following resolution was adopted:

**Change in Zoning from R-4 and C-1 to R-7:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the site is located on Bardstown Road, a major arterial road and transit corridor; and the required buffer yards will be provided in order to provide a transition between the site and the adjacent single-family residential uses; and

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**WHEREAS**, the Commission further finds that the proposal meets Community Form: Goal 2 because the proposal would permit new development providing residential uses; and

**WHEREAS**, the Commission further finds that the proposal meets Community Form: Goal 3 because no severe, steep or unstable slopes are evident on the site. Wetlands on the site are small and non-jurisdictional. They are proposed to be removed; and

**WHEREAS**, the Commission further finds that the proposal meets Community Form: Goal 4 because no distinctive cultural features are evident on the site; and because no historic assets are evident on the site; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 1 because the site is located near (and partially overlapping) the Suburban Marketplace Corridor form district, and is located in proximity to an existing activity center and transit corridor; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is via Bardstown Road, a major arterial at this location; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities; and Transportation Planning has approved the proposal; and no direct residential access to high-speed roadways is proposed; and

**WHEREAS**, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; and Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets Livability: Goal 1 because relatively little tree canopy exists on the site. Tree canopy will be provided with preference to native species; and Karst features exist on the site. Karst will be mitigated upon development; and the site is not located in the regulatory floodplain; and

**WHEREAS**, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would permit a variety of housing types; and the proposed zoning district would support aging in place by increasing the variety of housing in the neighborhood. The site is in proximity to transit routes; and

**WHEREAS**, the Commission further finds that the proposal meets Housing: Goal 2 because the proposed zoning district would permit inter-generational mixed-income development that is connected to the neighborhood and the surrounding area; and the

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site is located in proximity to a multi-modal transportation corridor providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. The proposed zoning district would permit higher density, accessible residential uses along a transit corridor; and

**WHEREAS**, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would increase the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in Louisville Metro; and no existing residents will be displaced by the proposal; and the proposed zoning district would permit the use of innovative methods of housing.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council **APPROVE** the change in zoning for case 21-ZONE-0013 from R-4 single-family residential and C-1 commercial to R-7 multi-family residential, based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Mims, Peterson, Clare, Howard and Lewis**  
**NO: None**  
**ABSENT: Commissioner Daniels, Sistrunk, and Seitz**

On motion by Commissioner Brown made, seconded by Commissioner Howard, the following resolution was adopted:

**21-VARIANCE-0016:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health, safety or welfare as the decrease in setback will have no impact on sight lines; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the required setback is fairly far from Bardstown Road, with the result that the decreased setback is unlikely to be noticeable from the right-of-way; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the decrease in setback will not present a hazard or nuisance; and

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**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as there is no noticeable street wall along this section of Bardstown Road to break; and

**WHEREAS**, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site is fairly large and could be designed in a different way so as to provide the required setback; and

**WHEREAS**, the Commission further finds that 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 because the variance is needed in order to place the detention basins in a logical location given the general grading of the site; and

**WHEREAS**, the Commission further finds that 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** 21-VARIANCE-0016 from Land Development Code section 5.1.12.B.2.a to permit structures to be closer to Bardstown Road than permitted by the required infill setback with a maximum variance of 48-feet, based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Mims, Peterson, Clare, Howard and Lewis**

**NO: None**

**ABSENT: Commissioner Daniels, Sistrunk, and Seitz**

On motion by Commissioner Brown made, seconded by Commissioner Howard, the following resolution was adopted:

**Detailed District Development Plan with Binding Elements:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the site is lightly wooded and few natural resources exist on the site currently. Required tree canopy will be provided; and

**WHEREAS**, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community

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has been provided, and Metro Public Works has approved the preliminary development plan; and

**WHEREAS**, the Commission further finds that open space is being provided in compliance with the requirements of the Land Development Code; and

**WHEREAS**, the Commission further finds that 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 that 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 along a commercial corridor and major arterial street. The proposal would be less intensive than commercial uses which would also be appropriate at this location; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040 with the exception of the requested variance.

**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. 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 or demolition permit) is requested:

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- 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. In addition to Chapter 10 requirements, the plan shall include substantially the same vegetation as was shown during the November 29, 2021 Planning Commission hearing, and shall include an 8' privacy fence adjacent to R-4 zoned properties. 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 29, 2021 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 future development of both residual tracts 1 & 2 shall be limited to a single shared access to Watterson Trail and one to Bardstown Road with the corner lot (currently developed with a tire store). A crossover access agreement shall be required.

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8. The development shall be restricted to not more than 348 units (net density 19.67 dwelling units/acre). This binding element may not be amended without review by the full Planning Commission, with final approval by Metro Council.

9. Developer shall construct the improvements to Watterson Trail and Bardstown Road as shown during the November 29, 2021 Planning Commission hearing, prior to issuance of the 200th certificate of occupancy.

10. The sidewalk in the public right of way shall be constructed to the east beyond the site frontage to the Eastland Church of Christ driveway.

11. 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.

12. All Texas Gas recommendations and requirements shall be followed with respect to the Texas Gas easement.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for 21-ZONE-0013 along with the Binding Elements shown on page 13 of the staff report with the addition of the Binding Elements provided by staff heard at the November 29, 2021 Planning Commission night hearing, based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Mims, Peterson, Clare, Howard and Lewis**

**NO: None**

**ABSENT: Commissioner Daniels, Sistrunk, and Seitz**

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The meeting adjourned at approximately 9:58 p.m.

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**Chair**

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**Planning Director**