

PLANNING COMMISSION MINUTES
December 5, 2019

PUBLIC HEARING

CASE NO. 19ZONE1001

Request: Change in zoning from R-4 to R-5 with associated rear yard
Waiver and Major Preliminary Subdivision
Project Name: Shepherdsville Road Subdivision
Location: 8809 Shepherdsville Road
Owner: Linda Sue Goodwin Neubeck
Applicant: Superior Builders
Representative: Bardenwerper, Talbott & Roberts
Jurisdiction: Louisville Metro
Council District: 23 – James Peden
Case Manager: Dante St. Germain, 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:

01:51:47 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059

Summary of testimony of those in favor:

01:58:32 Mr. Pregliasco gave a power point presentation. This case was continued to gather additional information - traffic counts have been obtained, cost of moving telephone poles, how the property will look when it's developed and a proposed binding element for the applicant to contribute to an improvement in some form (not necessarily the turn lane). LG&E costs will be \$62,500 and \$189,000 is the total cost for the 34 lot subdivision. The proposed binding element has very broad language – a contribution of \$1,000 per lot, a total of \$34,000 to be used for sidewalks, road widening, etc.

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02:12:57 Commissioner Mims asked how much additional growth would be necessary before the auxiliary lane would be needed. Ms. Zimmerman said she went to the year 2032 using 1% growth rate and the turn lane is still not warranted. Looking at the annual traffic counts made by the Ky. Transportation Cabinet, Shepherdsville Rd. has shown no growth in traffic volume since 2003. It will take 20 left turn lanes in 2032 to meet the volume warrant.

Deliberation

02:16:10 Planning Commission deliberation. Commissioner Peterson said he would prefer the left turn lane but could vote in favor without it.

02:16:51 Commissioner Mims said this project does not warrant (not proportionate) the turn lane. It's an affordable housing project. The \$1,000 per lot contribution is more reasonable.

02:18:40 Commissioner Brown said he thinks the \$1,000 per lot is an underestimation. This is a rezoning and they need to mitigate that impact by providing the dedicated left turn lane for the new access point.

02:19:45 Commissioner Carlson said the left turn lane is needed and cost should not be a factor. Almost everyone that has done development in the Shepherdsville Rd. area has had to provide widening of the road to facilitate turning. Also, Shepherdsville Rd. is a major north/south route for emergency vehicles and there are no shoulders. There is an overall community benefit for the turn lane.

02:21:58 Commissioner Howard said she questions why the left turn lane needs to be put in now. Commissioner Brown said if the abutting lots are re-developed, and was a standard subdivision, we can't require off-site improvements for this left turn lane. Commissioner Howard remarked, then we're requiring a left turn lane for future development that may or may not occur. Commissioner Brown said it could be phased in, maybe wait for the last 4 lots.

02:27:11 Commissioner Peterson said he's in favor of the proposal.

02:27:15 Chair Jarboe said he wishes there could be some shoulder work done to make the road safer. The money being offered by the applicant is a nice gesture.

02:30:05 Ms. St. Germain stated the applicant has proposed language for the binding element to read as follows: The applicant shall contribute \$34,000.00 to Louisville Metro Public Works to use for any purpose within the council district including

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sidewalks, shoulders, turn lanes, etc. at the time of the recording of the record plat for section 1 of the subdivision. Commissioner Mims asked if the applicant is dedicating right-of-way. Ms. St. Germain said yes, a considerable amount.

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 to R-5

On a motion by Commissioner Mims, seconded by Commissioner Peterson, the following resolution based on the Plan 2040 Staff Analysis, testimony heard today, provision of smaller lots making the housing more affordable, the reasonable proportionate allowance of \$1,000 per lot provided by the developer and right-of-way dedication and the Applicant's Findings was adopted.

02:34:57 Commissioner Carlson said the applicant has not made any commitment for this project to be affordable housing. Commissioner Mims said the lots are smaller with more density on the property; therefore, driving down the overall development cost. Ms. Liu said to tie this case to affordable housing would mean it would have to meet certain criteria. Chair Jarboe said it's cheaper housing. Commissioner Mims added, it's an affordable concept that is being introduced into this neighborhood. Commissioner Howard stated because they're smaller lot sizes, it's more affordable to some people without having to go through the ADI.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal is for low-density residential zoning. Shepherdsville Road is a minor arterial at this location; the proposal is for low-density residential zoning and is not substantially different in scale, intensity or density from surrounding land uses. The surrounding zoning is R-4, which permits 4.84 dwellings per acre. The requested zoning is R-5, which permits 7.26 dwellings per acre; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils, or steep or unstable slopes are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the site; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposal is for low-density residential zoning and is not for high density or intensity; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the development will be achieved from Shepherdsville Road, a minor arterial at this location; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, no direct residential access to Shepherdsville Road is proposed. Access to Shepherdsville Road will be achieved via a local road passing through the development. Direct residential access will be to the local road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the appropriate utilities have approved the proposal; LWC has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the site features a small intermittent stream which is being placed in an open space lot; Karst features were discovered and will be mitigated during construction; the subject property is not located in the regulatory flood plain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would permit the construction of housing which would be of a moderately higher density than is permitted under the current zoning district, increasing the variety of housing in the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed zoning district is for a moderately higher density than allowed under the current zoning district, potentially increasing the variety of price points and providing more options for mixed-income development; the subject site is located ½ mile from Preston Highway, a multi-modal transportation corridor with amenities providing neighborhood goods and services. The proposal is not for higher-density residential zoning; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed zoning district would

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improve the variety of housing throughout Louisville Metro; existing residents will not be displaced.

Community Form: Goal 1 Policies 3, 7 and 9

The subject property is located in the Neighborhood Form District, which is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood area. Plan 2040 states that this form district will contain diverse housing types in order to provide housing choice for different ages, incomes and abilities. This proposal falls under the definition of a low-density development as low density is defined as single family residential under 5 dwelling units/acre and this request is for a maximum density of 4.4 dwelling units/acre. With the change to the R5 zone the lots are smaller but the overall density is still considered low and so is compatible with the surrounding lots which are zoned R-4 would also be a low density by virtue of the requirements of the R4 zone. This proposal provides an option for a single-family home on a smaller lot not otherwise found in the immediate vicinity and potentially reducing the home cost making it an affordable option for a wider range of individuals.

Community Form: Goal 2 Policy 9 and Goal 4 Policies 2 and 3

Though the goal is to encourage new developments and rehabilitation of buildings that provide commercial, office and or residential uses and to encourage preservation of distinctive cultural feature, the existing structures on the site are proposed to be demolished. The home constructed in 1926 is an example of a bungalow in rural Jefferson County, it is more than 90 years old but is not significant in its design, features or setting. It is not located in an Historic Preservation District and it is not listed on the National Register of Historic Places. The developer shall comply with the requirements of the Wrecking Ordinance Section 150.110 and the required 30 day hold on the issuance of the wrecking permit shall be observed.

Community Form: Goal 3 Policies 1, 2, 6, 7, 8, 9, 10 and 13

This goal is to enhance neighborhoods by protecting and integrating open space, watersheds and other natural resources. This subdivision complies with the intent and these policies as the layout proposed includes the creation of 1.6 acres of open space. This open space preserves and protects the existing intermittent stream that extends across a portion of the site, provides open space for use by the residents, and includes a detention basin proposed to address the increased storm drainage resulting from this development. The homeowner's association will maintain the open area.

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There are no known wet or highly permeable soils, steep or unstable slopes and no flood prone areas. A site survey has identified 2 potential sinkholes. These are located on buildable lots and will be further analyzed by a geotechnical engineer to determine appropriate mitigation methods to be followed during construction

Mobility: Goal 1 Policy 1, Goal 2 Policies 3 & 4, Goal 3 Policies 7 & 21

The Mobility goals are to implement an accessible system of alternative transportation modes, to provide a safe and accessible transportation system, and to encourage patterns that connect and support future growth. This subdivision complies with the intent and applicable policies in that sidewalks are proposed to be constructed along all road frontages, with the provision of stub street to both the north and south for potential future development, with no proposed access through lower intensity, with the provision of adequate right of way as required by the Land Development Code to be dedicated to Shepherdsville Road and for both of the proposed streets and with no direct access from the individual lots of the subdivision to Shepherdsville Road which is classified as a minor arterial road. Additionally, this subdivision provides a housing option on smaller sized lot that is not currently available in the area and these additional homes would be easily accessible to the regional center north of the site on the Outer Loop and the marketplace corridors located both north and west of the site on Preston Highway.

Community Facilities: Goal 2 Policies 1, 2 and 3

The proposed subdivision complies with the intent and applicable policies identified in the Community Facilities plan element since the subdivision is located in an area served by existing utilities that can be extended to serve the development including water, sewer, gas, electric, telecommunication lines and cable.

Livability: Goal 1 Policies 2, 5, 9 -11, 17, 19, 26 - 28 and 30

The goal of this element is to protect and enhance the natural environment and integrate it with the built environment as development occurs. An open space lot is provided in this subdivision that will protect all but about 60 LF of the existing 1,100 LF of intermittent stream that is identified in the north central portion of the site. In addition, in the open space lot a 25' stream buffer is shown along the intermittent streams banks to preserve the existing riparian zone vegetation for the wildlife that lives in these areas, to reduce the possibility of erosion, as a filter to catch water borne pollutants and to further mitigate negative impacts on the stream. A detention basin is also proposed in the open space lot to accommodate the increased storm drainage resulting from this development.

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Prior to the plan proceeding before the Planning Commission, it will be reviewed by and receive preliminary approval from MSD regarding the storm and sanitary sewer system proposed for the site. By this review MSD will ensure that post-development runoff rates do not exceed pre-development rates and therefore that this development will not have a negative impact on existing stormwater systems. At construction review MSD will ensure that the proposed subdivision plans will identify that Best Management Practices be utilized, will include measures to address water quality and comply with MSD's soil erosion and sediment control standards. For these reasons, the proposed subdivision shall comply with this goal.

Housing: Goal 1 Policies 1 & 2, Goal 2 Policies 1 & 2 and Goal 3 Policies 1-3

The goal of this element is to expand and ensure a diverse range of housing choices. The proposed subdivision allows for the construction of a home on a smaller lot than allowed on the surrounding R4 subdivisions and therefore potentially at a lower cost and appealing to lower income individuals. The smaller lot is one that is likely to appeal to older residents and individuals or couples without children thereby promoting inter-generational residents in this area.

Though the site is not currently served by public transit it is located in relatively close proximity being within a 2-mile radius to area workplaces, shopping and other neighborhood supportive facilities. These are found in the Regional Center and Suburban Market Corridors located on the Outer Loop and with both a Suburban Workplace and Suburban Marketplace Corridor on Preston Highway. It is also located just over a 1/2 mile from Preston Highway a multi-modal corridor with access to public transportation and an expanded variety of uses.

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 R-5, Single Family Residential on the property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Howard, Mims, Peterson and Jarboe

NO: Commissioners Brown and Carlson

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes and Lewis

Waiver from Section 7.3.30.E to allow more than 15% of the required rear yard of a buildable lot to be occupied by a drainage easement

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On a motion by Commissioner Mims, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the drainage easement is entirely on the subject property and designed to direct water away from adjoining properties; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address drainage easements; 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 MSD requires the easement to be in the given location; 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 because the easement is required by MSD and it is not optional for the applicant to provide it.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a waiver from section 7.3.30.E to allow more than 15% of the required rear yard of a buildable lot to be occupied by a drainage easement.

The vote was as follows:

YES: Commissioners Howard, Mims, Peterson and Jarboe

NO: Commissioners Brown and Carlson

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes and Lewis

Major Preliminary Subdivision DDDP with Binding Elements

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution based on the testimony presented today was adopted.

WHEREAS, there do not appear to be any historic resources on the subject site. Karst features were discovered on the site and will be mitigated during construction. The intermittent stream on site is being handled with an open space lot and a detention basin; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has not been provided. Metro

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Public Works requires a left-turn lane on Shepherdsville Road which the applicant does not propose to provide; and

WHEREAS, there are no open space requirements pertinent to the current proposal. One open space lot is being provided; 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. The proposed density is similar to the existing density in the neighborhood surrounding the site; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan does not conform to applicable guidelines and policies of the Comprehensive Plan as it does not meet Mobility and Housing policies. It does conform to requirements of the Land Development Code with the exception of the requested waiver.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **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. 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.

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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. 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.
6. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
7. 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."
8. 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.
9. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for "Street B". Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.

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10. 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.
11. 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 larvacide 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.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 - c. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
13. 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.
14. The applicant shall contribute \$34,000 to Louisville Metro Public Works to use for any purpose, with preference to the area of the site in question and adjoining properties, as determined by the Director of Public Works and Planning and Design Services. Such improvements could include sidewalks, shoulders, turn lanes and the contribution will be made at the time of the recording for section 1.

The vote was as follows:

YES: Commissioners Howard, Mims, Peterson and Jarboe

NO: Commissioners Brown and Carlson

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes and Lewis