

PLANNING COMMISSION
March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

Request: Change in Zoning from R-4 to R-5, with Associated Major Preliminary Subdivision, Detailed District Development Plan with Binding Elements, and Waiver

Project Name: Pulte Cedar Creek Road Subdivision

Location: 9220 & 9224 Cedar Creek Road

Owner: Wendell E. Thommasson Revocable Living Trust

Applicant: Pulte Group

Representative: Bardenwerper, Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 22 - Robin Engel, 23 - Jeff Hudson

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:44:20 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation.)

02:50:00 In response to a question from Commissioner Mims, Ms. St. Germain said there is R-5 property in this area (to the south.)

02:50:27 In response to a question from Commissioner Clare, Ms. St. Germain said the applicant has not agreed to a privacy fence, and there is no requirement in the Land Development Code for R-5 (versus R-4) to have a fence between.

The following spoke in support of the request:

John Talbott, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway
2nd Floor, Louisville, KY 40223

Derek Triplett, Land Design & Development, 503 Washburn Avenue Suite 101,
Louisville, KY 40222

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Dennis Thomasson, 301 Deacon Trace, Taylorsville, KY 40021

Dan Hempel, Pulte Group, 10350 Ormsby Place Suite 103, Louisville, KY 40223

Summary of testimony of those in support:

02:50:55 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

03:01:12 Derek Triplett, an applicant's representative, presented details about the site plan, particularly regarding the drainage (see recording for detailed presentation.)

03:03:44 Mr. Talbott resumed and concluded his presentation.

03:05:11 Dennis Thomasson, representing the beneficiary of the Wendell A. Thomasson Trust, said he was available to answer any questions.

03:06:03 In response to questions from Commissioner Sistrunk, Mr. Talbott said that this development will be under a homeowner's association and that street trees will be provided by the developer. Dan Hempel, an applicant's representative, said that the landscape package includes some plantings and the street tree. The street tree is not "deed restricted" (not required to remain.) Mr. Talbott said that the trees in front of people's yards are not included in the 40% tree canopy calculation.

03:08:40 In response to questions from Commissioner Mims, Mr. Talbott said there is a 30-foot buffer with trees on it, for the houses that back up to Cedar Creek Road. Mr./ Triplett said the trees are Type A, with one planted per 45 feet along that frontage.

03:10:03 In response to questions from Commissioner Sistrunk, Mr. Talbott said there are no current plans to install a four-board horse fence along the Cedar Creek Road frontage. Commissioner Sistrunk asked if that fence could be considered.

03:11:25 In response to questions from Commissioner Carlson, Mr. Talbott used a slide to show connections between the subject site and an adjacent neighborhood and traffic patterns.

03:14:03 Mr. Triplett clarified that the Scenic Corridor requirements are a 6-foot visual barrier (either a berm, or shrubs, or evergreen plantings) be established along that frontage, and one Type A every 40 feet.

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03:14:20 In response to questions from Commissioner Lewis and Sistrunk, Mr. Talbott & Mr. Hempel discussed sidewalks along Cedar Creek, and elected to not provide the four-board fence due to enhanced screening & buffering along Cedar Creek. Commissioner Sistrunk pointed out locations along Cedar Creek that have four-board fences. Mr. Hempel said the applicant would be willing to do this fencing along the four properties that have frontages along Cedar Creek (see recording for detailed discussions.)

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

Paula Miles, 9930 Thixton Lane, Louisville, KY 40291

Summary of testimony of those neither for nor against:

03:17:12 Paula Miles said she is speaking on behalf of her parents, who live at the north property. She said her brother and his wife live on the back five acres, which back up to the property. She advocated for a privacy fence around the new development, and highlighted other concerns from the neighbors (see recording for detailed presentation.) Concerns included: The size of the lots and the number of houses proposed for 12 acres; increased traffic and speeding on Cedar Creek Road; residents want a four-way stop at the intersection of Fairmount and Cedar Creek Road; "wet and swampy" land at the back of the development and water diversion to adjoining properties; the potential destruction of existing trees; damage to trees on adjacent properties' trees; privacy and security for adjacent homes; building homes on or near sinkholes.

The following spoke in opposition to the request:

Matt Sanders, 9116 Cedar Creek Road, Louisville, KY 40291

Summary of testimony of those in opposition:

03:24:30 Matt Sanders said he lives a few houses up from the subject site. His concerns include: Increased density, increased traffic; and traffic safety issues (he said there is a large community of bicyclists that use this area). He also requested a four-way stop at the intersection of Fairmount and Cedar Creek Road;

Rebuttal:

03:27:28 Mr. Talbott delivered rebuttal (see recording for detailed presentation.)

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03:29:31 Commissioner Carlson questioned Mr. Talbott's use of "housing shortage", which he said usually means "affordable housing". Mr. Talbott said there is no affordable housing planned for this project.

03:31:08 In response to questions from Commissioner Carlson, Mr. Triplett said there was no requirement for a karst survey; however, geotechnical engineers will be on-site during construction making recommendations as necessary.

03:32:02 In response to questions from Commissioner Carlson, Beth Stuber, with Metro Transportation Planning, said the possibility of a four-way stop at Fairmount and Cedar Creek Road is "very unlikely". It would have to meet the warrants for a stop signal (see recording for detailed explanation.) This would be a Metro decision, not State.

03:33:54 In response to a question from Commissioner Pennix, Ms. Miles said she had collected about 25 signatures on her petition from people interested in a privacy fence.

Deliberations:

03:35:38 Commissioners' deliberation.

03:37:11 Ms. St. Germain read a proposed binding element into the record, which the applicant has agreed to, as follows:

A four-board horse fence shall be provided along the Cedar Creek Road frontage (Lots 1 – 4). Maintenance of the fence shall be the responsibility of the developer, until such time as control of the Homeowners' Association is turned over to the homeowners, at which point maintenance responsibility shall transfer to the HOA.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Change in zoning from R-4 Single Family Residential to R-5 Single Family Residential

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03:37:41 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the proposal is not for higher density or intensity use; and the proposal is not substantially different in scale or intensity or density compared with the development around it; and

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 wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; 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 no historic assets are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the proposal is not for higher density or intensity zoning; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the development is through areas of similar intensity and density; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by bicycle and car. Access via transit, or by or people with disabilities may be improved by the redevelopment of the site; 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; 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 the site is largely cleared at this time and tree canopy will be provided with the

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development; no karst features are evident on the site; 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 increase the variety of housing types in the neighborhood by permitting housing on smaller lots than is typical for the immediate vicinity; and the proposal would support aging in place by providing smaller, lower-cost homes in an established neighborhood, thereby increasing housing choice for persons who may wish to remain in the neighborhood as they age; 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. The site would be connected to the neighborhood and the surrounding area; and the site is not located on or near a transit corridor; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in the neighborhood, and within Louisville Metro; no existing residents would be displaced by the proposal; and the proposal would permit accessory dwelling units; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4 Single Family Residential to R-5 Single Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

Waiver from 7.3.30.E to permit a rear yard to overlap with a drainage easement by more than 15% (22-WAIVER-0223)

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03:38:42 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the overlap between the rear yard and the drainage easement is not likely to be visible outside the property or increase drainage off the property; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address overlap between required yards and drainage easements; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the overlap is made necessary by MSD generally requiring drainage easements to be in rear yards; and

WHEREAS, the Commission further finds that 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 by requiring excess rear yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from 7.3.30.E to permit a rear yard to overlap with a drainage easement by more than 15% (22-WAIVER-0223)

The vote was as follows:

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

Major Preliminary Subdivision (22-MSUB-0012)

03:39:33 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the site is mostly cleared and no natural resources are evident on the site. 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 has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that no open space provisions are pertinent to the request; 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 at a similar scale an intensity to existing development; 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 waiver; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Major Preliminary Subdivision Plan (22-MSUB-0012).

The vote was as follows:

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

Detailed District Development Plan with Binding Elements

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03:40:12 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is mostly cleared and no natural resources are evident on the site. 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 has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that no open space provisions are pertinent to the request; 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 at a similar scale an intensity to existing development; 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 waiver; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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.

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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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Cedar Creek Road to provide a total of 40 feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit. If necessary, the dedication can be shown on the record plat.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A 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,

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- 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. 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. 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."
 10. 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.
 11. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for "Proposed Amaranth Drive". Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.

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12. 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.
13. 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. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
14. 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.
15. 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.
16. The signature entrance shall be submitted to the Planning Commission staff for review and approval.
17. A four-board horse fence shall be provided along the Cedar Creek Road frontage (Lots 1 – 4). Maintenance of the fence shall be the responsibility of the developer, until such time as control of the Homeowners' Association is turned over to the homeowners, at which point maintenance responsibility shall transfer to the HOA.

The vote was as follows:

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YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.