

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION MEETING
April 5, 2021**

A special meeting of the Louisville Metro Planning Commission was held on Monday, April 5, 2021 at 6:30 p.m. online via Webex and at the Okolona Church of Christ, located at 6105 Outer Loop, Louisville, KY 40219.

Commissioners present:

Marilyn Lewis, Chair
Lula Howard, Vice Chair
Jeff Brown
Jim Mims
Rob Peterson
Ruth Daniels
Rich Carlson
Te'Andre Sistrunk
Patricia Seitz
Patricia Clare

Commissioners absent:

No one.

Staff members present:

Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
Brian Davis, Planning Manager
Julia Williams, Planning Supervisor
Dante St. Germain, Planner II
Laura Ferguson, Legal Counsel
Beth Stuber, Transportation Planning
Mark Sites, MSD

The following matters were considered:

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

Request: Change in Zoning from PRD & R-4 to R-6, with Detailed District Development Plan and Binding Elements, and Variance

Project Name: Cooper Chapel Apartments

Location: 6600 & 6702 Cooper Chapel Road

Owner: Gary & Cherrlynn Eibeck Living Trust

Applicant: LDG Development

Representative: Dinsmore & Shohl LLC

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 reports prepared for these cases were incorporated into the record. The Commissioners received these reports in advance of the hearing, and these reports were available to any interested party prior to the public hearing. (The staff reports are part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:06:00 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.) She noted that, since the publication of the staff report, she received two phone calls from interested parties who were both in opposition. She said they may have signed in to speak tonight.

00:17:13 In response to questions from Commissioner Mims, Ms. St. Germain said the properties to the east of this site are privately owned by someone other than the developer. They are not part of the park.

00:18:32 Commissioner Carlson and Ms. St. Germain discussed possibly making a connection into the park at the south end (see recording for detailed discussion.)

00:20:50 In response to a question from Commissioner Carlson, Ms. St. Germain discussed the lack of TARC stops in this vicinity. Commissioner Sistrunk said that Outer Loop at Preston is the closest stop. Ms. St. Germain said TARC had no comments on this plan because they said it does not impact a current or

PLANNING COMMISSION MINUTES
APRIL 5, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0066

projected/future TARC route. It is unknown if TARC has any plans for a route here in the future.

00:22:03 Joe Reverman, Assistant Director with Metro Planning & Design Services, addressed one of Commissioner Carlson's questions about an approved plan for the development to the south. The plan does not include a stub connection to this site.

The following spoke in support of this request:

Cliff Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

Michael Gross and Ramona Bosta, LDG Development

Diane Zimmerman, traffic engineer

John Campbell, Heritage Engineering, 642 S 4th St, Louisville, KY 40202

Summary of testimony of those in support:

00:24:02 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:33:33 John Campbell, an applicant's representative, discussed the evolution of this plan, amenities for the residents who will live there, and details about the proposed buffers (see recording.)

00:40:24 Mr. Ashburner resumed the applicant's presentation.

00:52:12 Commissioner Sistrunk asked about safety features for the gravel/mulch connection back to the park, specifically any plans for lighting. Mr. Ashburner said there is not a definitive design for that yet. Commissioner Mims asked for more specifics about what Metro Parks has said about that connection. Mr. Campbell discussed conversations he had had with Jason Canuel at Metro Parks regarding access. Mr. Campbell said that Mr. Canuel acknowledged that the grade change from the applicant's site into the park and beyond would not be conducive to constructing ADA-compliant access. (See recording for detailed discussion.)

00:55:40 Commissioner Mims and Mr. Ashburner discussed Diane Zimmerman's analysis of an auxiliary left-turn lane.

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

00:56:38 In response to a question from Commissioner Mims, Mr. Campbell discussed conversations he had with MSD about the new pump station and how it would handle wastewater from this project.

00:58:57 In response to a question from Commissioner Carlson, Mr. Campbell showed the location of the new pump station (see recording.) He noted that the develop is providing a sanitary sewer easement to the park, in the event that the park wants to do any upgrades, build restroom facilities, etc.

01:01:01 Commissioner Carlson asked about a karst feature, and whether this will entail rock removal. Mr. Campbell explained how this feature will be handled, and said no rock removal is anticipated at this time.

01:01:46 In response to a question from Commissioner Carlson, Mr. Ashburner discussed the proposed Kentucky State widening of Cooper Chapel Road. Louisville Metro is engaged in purchasing and reserving right-of-way. Commissioner Brown elaborated on the Cooper Chapel Extension (a Metro project) which is funded through construction; the same with the State project on Beulah Church Road (see recording for detailed discussion.) He said the projects should be completed around 2024 or 2025.

01:03:34 In response to a question from Commissioner Carlson, Mr. Ashburner said the peak hour trips from this development were “well below” the threshold to require a traffic impact study. At the request of Metro Transportation Planning, Ms. Zimmerman did do a turn lane warrant analysis; neither a right-turn nor a left-turn lane were indicated as necessary.

01:04:40 In response to a question from Commissioner Carlson, Mr. Ashburner confirmed that the informal access to the park will not provide access to the golf course.

01:05:33 Commissioner Carlson and Mr. Ashburner discussed tree preservation up until the time that construction actually begins (not cutting trees down until construction time.) Mr. Ashburner said he believed this should be covered by binding element #4 D, which reads:

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.**

01:08:46 In response to a question from Commissioner Carlson, Mr. Ashburner discussed the 15-foot evergreen landscape buffer, plus a grade change (parking lot is lower than the adjoining properties) that would protect existing homes from vehicle headlight trespass.

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

01:10:39 Commissioner Carlson and Mr. Ashburner discussed other parks that are adjacent to multi-family residential areas, and those parks are accessible to residents (bikes, pedestrians, etc.)

01:13:46 Commissioner Carlson and Mr. Ashburner discussed the access to the shopping center at the intersection of Lantana and Cooper Chapel, and whether there will be a crosswalk, sidewalks, and/or pedestrian connection. Commissioners Mims and Brown discussed planned work for Cooper Chapel (both State and Metro work.) Most of the Complete Streets improvements will be east of Beulah Church Road. (see recording for detailed discussion.)

01:20:28 In response to a question from Commissioner Carlson regarding the reason/s for the Variance request, Mr. Ashburner said that, due to the grade change, none of the buildings will appear to be over 35 feet tall from off-site. There was detailed discussion about regulations regarding the 35-foot limit. Commissioner Carlson said the applicant would still get "reasonable use" of the land if the ceiling heights were decreased to eight feet from the proposed 10 feet, thus eliminating the need for the Variance request. Mr. Ashburner said the applicant is trying to provide a product that is not currently available in the area.

01:25:10 In response to a question from Commissioner Clare, Mr. Campbell offered clarification regarding the renderings (see recording for detailed discussion.) Commissioner Clare said the park access was "critical" and asked the applicant to continue to work with Metro Parks to make sure this serves the residents. Mr. Ashburner said the applicant would continue to work with Metro Parks.

The following spoke in opposition to this request:

Karen Lauder, 6801 Cooper Chapel Road, Louisville, KY 40229

Billy Grey

David Steff (sp), 7812 Applevue Lane, Louisville, KY 40228

Larry Churchman, 9317 Lantana Drive, Louisville, KY 40229

John Spencer, 6807 Cooper Chapel Road, Louisville, KY 40229

Tom Simmons, 6508 Cooper Chapel Road, Louisville, KY 40229

Hal Taylorson, 8906 Lantana Drive, Louisville, KY 40229

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

Dorsey Kozarovich, 6502 Park Chase Court, Louisville, KY 40229

Leslie Weller, 9110 Satinwood Court, Louisville, KY 40229

Christie Mulhall, 10010 Honey Lane, Louisville, KY 40229

Summary of testimony of those in opposition:

01:27:51 Karen Lauder said she opposes the plan because it does not meet the requirements for Plan 2040. She said the plan will destroy the rural landscape and character of the area, and increase danger from increased traffic on roads that cannot handle it. There is lack of bus service, lack of sidewalks, and the “grocery store” is a small convenience/liquor store. There is a Kroger and a Value Market on Outer Loop, but not within a walkable distance. There is no access to the park for anyone and it is not ADA accessible. She said there are caves and sinkholes in the area due to karst topography. How will blasting affect neighboring homes? There is Kentucky Glade Cress, an endangered plant species, in the park and the area.

01:32:29 Billy Grey was called but was not present or online.

01:33:13 **NOTE: David Steff (sp) and Commissioner Carlson both disclosed that they are related, but affirmed that this would not affect any decision making on this case.** David Steff, president of the Apple Valley homeowner’s association, said he has traffic concerns because the roads are not wide enough and are dangerous. This is especially true of Cooper Chapel Road and Beulah Church in this area. There is no public transportation. Combining this project with the other apartment project on Cedar Creek Road will greatly increase traffic and backups onto the Gene Snyder. Three story buildings next to the park is incompatible with the whole area. He asked if LDG going to be held to this plan. He discussed a bus stop at Outer Loop and Apple Valley Drive that blocks traffic, and said the traffic flow coming from Outer Loop Plaza is “a mess”. He said the infrastructure, particularly the roads, cannot handle this much development and the State has waited many years to fix the roads here.

01:39:10 Larry Churchman said he owns the property behind the proposed water treatment plant. He said the project is too large for the area, it is too large for this small piece of property, and he does not think the roads and infrastructure around it can handle it. He said only a small portion of the park is pedestrian -accessible; most of the park consists of the lake and the golf course. There are no sidewalks. There is already multi-family apartments that have south-side access to the park, and there are also new developments already going in in this area.

PLANNING COMMISSION MINUTES
APRIL 5, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0066

01:42:14 John Spencer said he had concerns about putting an entrance into the park and criminal activity in the park. He said that, if the applicant want to put in nine-foot ceilings, then make the buildings two stories instead of three. He asked how many toilets would be in this development and if the proposed wastewater treatment plant could handle that. He suggested the applicant wait on this project until Cooper Chapel is widened, and has sidewalks and possibly a traffic light. He noted that there are already apartment projects going in in this area.

01:45:34 Tom Simmons said the traffic analysis done for this area was done in 2016, and the turn analysis was based on this 2016 data. He said information that there are 1000 housing units in this area; he said this geographic area, within two miles, has 3000 housing units, and there are approximately 1000 more going in by this same company in this area (178 on Smyrna; 288 on this property, and several hundred on Cooper Chapel Road.) He said the people on the third floor of this development will be able to look into adjacent property owners' backyards and homes. He said this three-story building is out of character with the existing two-story housing units. He said the "informal access" to the park leads to nothing but woods and fields.

01:49:34 Hal Taylorson said he concurs with all of the opposition statements given previously. He said the applicant compared the condominiums to the south as "like" this proposed development. He said that development is patio homes, and the number of units is significantly less. He disputed the applicant's assertion that McNeely Park is comparable to Cherokee Park. He said 288 apartments could mean approximately 500 adults; he said the traffic study does not reflect this and is not accurate. He said the neighborhood has already experienced sewage and wastewater backups. He discussed reasons why he does not think that the proposal does not meet the Plan 2040 goals of Health, Sustainability, and Equitability. He said Cooper Chapel is "notorious" for traffic accidents, mostly because it is very narrow, and cannot handle additional traffic. He is concerned about increasing traffic and pedestrian fatalities. He expressed concerns about added air pollution and said the area already has air quality issues because of the proximity of the Gene Snyder. This plan does not promote walkability, and could damage the ecosystem of the lake.

01:58:22 Dorsey Kozarovich said her primary concern is a loss of privacy. She said she is also concerned about traffic due to the narrowness of the road and no street lights on Cooper Chapel. She said the gravel "road" is used for lawn services and is not a real road. She said 200 apartments in this small space is too dense.

02:01:25 Leslie Weller said there is a fire hydrant in front of the property on Cooper Chapel and wants to make sure it remains there. She said the L & N Credit Union building behind her home is also three stories and does not fit into the neighborhood; she also mentioned other large developments that are going in in this area. Most of the

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

homes here are single-story. She said Cooper Chapel cannot handle this much proposed traffic.

02:06:03 Christie Mulhall said walking or biking to the shopping center is “impossible”. She said the amount of apartments and rapid development here is greatly increasing the traffic. She said no developer ever addresses traffic or safety and the roads are too small. She said the rural area, the community, and the people who live here are not being considered.

The following spoke neither for nor against the request (“Other”):
No one spoke.

Rebuttal:

02:09:53 Mr. Ashburner delivered rebuttal (see recording for detailed presentation.)

02:20:24 In response to a question from Commissioner Carlson, Ms. St. Germain said a full turn-lane analysis was submitted by the applicant. Warrants were noted in her staff presentation. Mr. Ashburner said that Diane Zimmerman, traffic engineer, looked at traffic counts and did a trip generation study that indicated that a full traffic impact analysis was not warranted. She did provide a turn-lane warrant analysis, which included information regarding trips in and out, as well as traffic on the road.

02:22:19 Commissioners Mims and Brown discussed trip generation thresholds which would trigger a traffic impact study. Commissioner Mims said he still has concerns about the lack of a formal connection into McNeely Lake park and wants to hear from Metro Parks about this issue. He also said that the road improvements on Cooper Chapel are “a long ways out” and wanted to look at the adequacy of the sidewalks on north side of Cooper Chapel and whether there are areas where some gaps could be filled to improve pedestrian connectivity. He also asked why there are no stub streets to adjoining properties.

02:25:02 Commissioner Mims asked Ms. St. Germain if affordable housing will be provided here; also about Commissioner Carlson’s concerns about pre-construction tree removal. Joe Reverman, Assistant Director with Metro Planning and Design Services, said that issue was “thoroughly vetted” with Metro Parks, because Planning & Design Services wanted at least pedestrian access to the park. He said Metro Parks was not interested in any type of connection from this development into the park. He said the applicant had addressed this issue with the compromise of the “informal” access (see recording for detailed discussion.)

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

02:27:43 Ms. St. Germain said she was not aware that this will necessarily be an affordable housing development. That was not something that was reviewed as part of the Land Development Code, that is more of a Comprehensive Plan question. Mr. Ashburner said this proposal does not have any tax credits or subsidies attached to it; these are market-rate units.

02:28:43 Mr. Reverman addressed tree-clearing issues. Binding element #4 was discussed.

02:30:28 Commissioner Lewis asked Mr. Ashburner to address the issue of blasting (see recording.) Pre-blast and post-blast surveys are commonly performed by companies who do this work. It is not known if any type of blasting will be done here at all. Commissioner Carlson noted that the State does regulate blasting, but the State does not have any requirements for blasting surveys.

02:32:40 Laura Ferguson, Assistant County Attorney, noted that there is a permitting process requiring an applicant to demonstrate that operations will not damage nearby residential structures. See recording for detailed discussion.

02:33:37 Commissioner Clare asked for further information about what the project would look like from the street, on all sides (see recording.)

02:38:58 Mr. Simmons said no one has addressed the privacy concerns of the surrounding houses next to the three-story buildings. Mr. Ashburner explained the treed landscape buffer, the parking area, and other mitigation measures (see recording.)

Commissioners' deliberation

02:41:08 See recording for detailed discussion.

02:59:34 Mr. Reverman proposed a binding element regarding the trees, to read as follows:

Clearing of trees greater than four inches in caliper shall not be permitted until construction plans have been submitted to Louisville Metro Construction Review or Transportation Plan Review. Submittal of roadway construction plans shall only permit clearing necessary for the construction of the roadways. This shall not preclude the mowing of underbrush or clearing necessary for geotechnical or other site investigation work.

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

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 PRD Planned Residential Development & R-4 Single Family Residential to R-6 Multi-Family Residential

03:00:54 On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution, based on the applicant's justification, 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 complies with the intent and applicable policies of the Community Form Plan Element. Comp Plan, §3.1.3. Here, the proposal is consistent with the Neighborhood Form district as it proposes high-density multi-family housing that will bring a diversity of housing options to the area while remaining compatible with nearby land uses. The proposal is consistent with the pattern of development, scale, and site design in the area, which features numerous other multi-family developments. The Park Church Apartments are located just to the south of the subject properties along Leisure Lane, and that property is also zoned R-7. Multi-family housing can also be found northeast near the intersection of Beulah Church Road and Interstate 265 at the Arbor Creek, Aspen Glen, Avalon Springs, and Ashton Park developments. The applicant has also incorporate screening and buffering into the design of the proposed development to render it more compatible with adjacent uses; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of the Mobility Plan Element. The proposed development will have two access points along Cooper Chapel Road, which is classified as a Primary Collector. The internal parking and vehicle use areas are all interconnected. Traffic impacts to Cooper Chapel Road will be mitigated by the fact that the lots across Cooper Chapel are relatively undeveloped and by the two access points to Cooper Chapel. The site has access to 1-265 via Cooper Chapel/Smyrna Parkway. Access to the commercial centers along Preston Highway and Beulah Church Road are also available via Cooper Chapel Road. Adequate parking spaces, including 20 garage spaces, will be provided. Sidewalks will be provided throughout the development and along the frontage with Cooper Chapel. The applicant will also work with Louisville Metro Parks to provide a walking connection between the subject property and McNeely Lake Park; and

WHEREAS, the Commission further finds that the proposed development complies with the intent and applicable policies of the Community Facilities Plan Element. The subject

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

property is adequately served by all utilities, including water and sewer. Furthermore, the subject property is located near the Quail Chase Golf Course, Penn Run Golf Course, and McNeely Lake Park. Southern High School and Wilt Elementary School are also nearby. Jefferson County Government facilities are also located nearby along Outer Loop Road; and

WHEREAS, the Commission further finds that the proposed development complies with the intent and applicable policies of the Economic Development Plan Element. The proposed use will create 288 new apartments in this quickly developing area of Jefferson County. The development has good access to the commercial and industrial centers along Preston Highway, as well as Interstates 265 and 65. GE's Appliance Park is a 15 minute drive north; and

WHEREAS, the Commission further finds that the proposed development complies with the intent and applicable policies of the Livability Plan Element. The proposal calls for a community clubhouse and pool. The proposed development will comply with the tree canopy sections of the LDC. Approximately 2.5 acres of open space (including potential playgrounds and a dog park) are provided in the proposed development, and the proposed development has easy access to recreational areas such as Quail Chase Golf Course, Penn Run Golf Course, and McNeely Lake Park; and

WHEREAS, the Commission further finds that the proposed development complies with the intent and applicable policies of the Housing Plan Element. The proposed development will bring a diversity of housing options to the area, as is consistent with Plan 2040 and the Neighborhood Form District. The proposed development is near numerous recreational activities, including Quail Chase Golf Course, Penn Run Golf Course, and McNeely Lake Park; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 1 because the proposed zoning district would permit higher density and intensity uses. There is a small activity center near the site providing neighborhood goods and services; and adequate transitions and buffering is being provided between the proposed development and adjacent, lower-intensity development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 2 because the proposal would be a new development providing residential zoning; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 3 because no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the subject site; and

PLANNING COMMISSION MINUTES
APRIL 5, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0066

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 4 because tree canopy is being preserved on the site as required by the Land Development Code; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 1 because the proposed zoning district would permit higher density and intensity uses. The site is within proximity to a small existing activity center providing neighborhood goods and services; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 2 because access to the site is via Cooper Chapel Road, a primary collector at this location; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 3 because the site is easily accessible by car, although it would be more difficult to access the site by bicycle, transit, pedestrians and people with disabilities. The sidewalk network in the neighborhood is incomplete, and to reach it residents would need to cross Cooper Chapel Road at an uncontrolled location; 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 the intents of 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 the intents of Livability: Goal 1 because tree canopy is being preserved on the site and additional tree canopy will be provided; karst features on the site have been identified and will be mitigated at construction; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets the intents of 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 options and price points in the neighborhood; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 2 because the proposed zoning district would allow for inter-generational mixed-income development; and the site is not located in proximity to a multi-modal transportation corridor. The proposed zoning district would permit higher density residential uses. The site is located in proximity to an activity center; and

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 3 because the proposed zoning district would permit an increase in the variety of ownership options and unit costs throughout Louisville Metro; and the proposal would expand opportunities for people to live in quality, variably priced housing in locations of their choice; and no existing residents will be displaced by the proposal; and the proposed zoning district would permit innovative methods of housing; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from PRD Planned Residential Development & R-4 Single Family Residential to R-6 Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Mims, Peterson, Sistrunk, Brown, Seitz, Clare, Howard, and Lewis.

NO: Commissioners Daniels and Carlson.

Variance from LDC table 5.3.1 to allow structures to exceed the maximum allowed height (allowed 35', proposed height 38', variance of 3') (20-VARIANCE-0126)

03:02:28 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the applicant's justification, the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro planning Commission finds that the proposed variance, which will permit the applicant to exceed the maximum building height by three feet, will not adversely affect the public health, safety or welfare. The applicant proposes to develop the subject property into twelve (12) apartment buildings, with an overall total of 288 apartment units. The height variance is sought for the three-story apartment buildings, which will each be 38 feet in height to allow for higher ceilings in the proposed apartments. The requested variance from the maximum building height will not alter the proposed density or otherwise result in any adverse impacts on public health, safety, or welfare; and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity as the proposed height variance will permit the

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

proposed apartment buildings to exceed the maximum building height by only three feet. The area includes other multi-story multi-family developments; and

WHEREAS, the Commission further finds that the variance will not cause a hazard or nuisance to the public. The proposed variance will permit the proposed apartment buildings to exceed the maximum height by only three feet. The variance will not have any adverse impact on the sightlines of adjacent property owners; and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal will allow the applicant to exceed the maximum building height by only three feet to provide 288 high-quality apartment units to the area; and

WHEREAS, the Commission further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The proposal calls for development of 12 apartment buildings, which requires a variance of only three feet from the maximum building height; and

WHEREAS, the Commission further finds that the strict application of the regulations would create an unnecessary hardship because the applicant is requesting only a three foot variance from the maximum building height. Strict application of the regulations would force the applicant to redesign its buildings to lower the ceilings in each unit; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance as the applicant has not yet developed the subject property; and

WHEREAS, the Commission further finds that the requested variance will not adversely affect public health, safety or welfare as the increase in building height will not affect sight lines or create any other public health, safety or welfare issues; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the variance requested is relatively small and unlikely to be apparent to the public; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the increase in height is relatively small and unlikely to be visible to the public; and

WHEREAS the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the requested variance is

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

relatively small and is needed to provide an extra foot of interior height for each floor to provide higher ceilings; 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; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from LDC table 5.3.1 to allow structures to exceed the maximum allowed height (allowed 35', proposed height 38', variance of 3') (20-VARIANCE-0126).

The vote was as follows:

YES: Commissioners Mims, Peterson, Sistrunk, Brown, Seitz, Clare, Howard, and Lewis.

NO: Commissioners Daniels and Carlson.

Detailed District Development Plan with replacement of Binding Elements

03:03:58 On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution, based on the Standard or Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that no steep slopes, water courses, flood plains, soils, air quality, scenic views or historic sites are evident on the subject site. The required tree canopy is being preserved on site; 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 sufficient open space as required by the Land Development Code is being provided to meet the needs of the proposed development; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

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 compatible with the existing and future development of the area. The required buffers are being provided between the three-story buildings and the adjacent single-family development. The proposal would permit future residents to live in proximity to the park; and

WHEREAS, the Commission further finds that the development plan generally conforms to applicable guidelines and policies of the Land Development Code, with the exception of the requested variance. The development plan is generally in conformance with the Comprehensive Plan, as the proposal would provide additional housing and increase the variety of housing in the neighborhood; 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.
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:

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

- a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor plat or legal instrument shall be recorded consolidating the parcels into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 5, 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. Clearing of trees greater than four inches in caliper shall not be permitted until construction plans have been submitted to Louisville Metro Construction Review or Transportation Plan Review. Submittal of roadway construction plans shall only permit clearing necessary for the construction of the roadways. This shall not preclude the mowing of underbrush or clearing necessary for geotechnical or other site investigation work.

**PLANNING COMMISSION MINUTES
APRIL 5, 2021**

PUBLIC HEARING

CASE NO. 20-ZONE-0066

The vote was as follows:

YES: Commissioners Mims, Peterson, Brown, Seitz, Clare, Howard, and Lewis.

NO: Commissioners Daniels, Sistrunk, and Carlson.

PLANNING COMMISSION MINUTES
April 5, 2021

ADJOURNMENT

The meeting adjourned at approximately 9:05 p.m.

Chairman

Division Director