

**Planning Commission  
Staff Report**  
December 9, 2019



|                          |                             |
|--------------------------|-----------------------------|
| <b>Case No:</b>          | 18SUBDIV1019                |
| <b>Project Name:</b>     | Indian trail Subdivision    |
| <b>Location:</b>         | 4804 E. Indian Trail        |
| <b>Owner:</b>            | LAICC, Inc.                 |
| <b>Applicant:</b>        | LAICC, Inc.                 |
| <b>Representative:</b>   | Mindel Scott                |
| <b>Jurisdiction:</b>     | Louisville Metro            |
| <b>Council District:</b> | 2 – Barbara Shanklin        |
| <b>Case Manager:</b>     | Joel Dock, AICP, Planner II |

**REQUESTS**

- **Waiver** of Land Development Code (LDC), section 7.3.30.B to allow 3 lots to abut an alley and not a street
- **Variance** of LDC, section 4.5.6.B to reduce the required 75’ open space lot width to 60’
- **Major Preliminary Subdivision Plan (Alternative Development Incentives)** for the creation of 20 single-family lots

**CASE SUMMARY**

The proposed subdivision is located roughly ½ mile southwest of Newburg Road, immediately abutting the Newburg Library and Community Center. Petersburg Park is also within close proximity to the east of the subject site and accessible via pedestrian pathways. Twenty single-family lots utilizing the Alternative Development Incentives (ADI) of Chapter 4, Part 5 of the Land Development Code are proposed. This alternative form of development allows the developer to select from a menu of community benefits, including diversity housing, open space, location along major transit corridors (efficient land use), and/or preservation of cultural resources. In return, relief is received from the ordinary standards of the zoning/form district, notably the minimum lot size. The permitted gross density is then regulated by the total credit received from providing community benefits. The applicant is receiving credit for providing diversity housing in a Qualified Neighborhood at level 3 or higher and open space greater than 20% of the gross land area. Lots 1-7 will be reduced to 4,520 square feet. All other lots will remain above 6,000 square feet.

A 50’ public area of record in PB 27, PG 6 separates the site from E. Indian Trail. A public alley will provide primary vehicular access to lots 14-16. All other lots will abut a public street. A sidewalk within an easement at the north side of lots 14-16 will provide pedestrian connectivity. Cross-connectivity to/from the alley will be provided by agreement with the owner/developer of residual Tract 2.

A 60’ MSD easement containing underground facilities separates the residential lots within the development from abutting residential lots to the south. Open space will be provided in the area of the easement and detention/water quality. The neighborhood asset (top of box culvert/pedestrian pathway) will be retained within the open space and its current function will remain undisturbed. Public sidewalks and internal walks are being provided with connectivity to the neighborhood asset.

**STAFF FINDING**

The proposed major preliminary subdivision is in compliance with the Land Development Code, except for those regulations from which relief has been appropriately requested. The waiver and variance have been adequately justified based on staff’s analysis contained in the standard of review.

**TECHNICAL REVIEW**

**Alternative Development Incentives**

- Alternative Development incentives “set forth a menu of development incentives that, while maintaining current zoning district densities, allows reduction of lot sizes in return for provision of open space, housing diversity, preservation of cultural resources, and efficient land use (building near major transit corridors and building on brownfields) in larger residential developments.
- To qualify for incentives and receive credit for community benefits in Qualified Neighborhood ‘A’ 10% of lots within the subdivision must be provided at any level of diversity to a Qualified Buyer.
- Allowable density is calculated using total points earned from community benefits as outlined in Table 4.5.1. The developer is entitled to the following based on Table 4.5.1:
  - 2 pts – 10% of units sold at level 3 or 4
  - 3.5 pts – Provide units to be sold at level 3 or higher in Qualified neighborhood ‘A’
  - 1.5 pts – 20% common open space or higher
  - 7 total points received for a maximum gross density of 5.2 du/ac (Note: a minimum of 3 pts is required to secure the proposed density of 3.8 du/ac).
- Conditions of approval 13 and 14 have been added to further secure compliance with the ADI requirements.
- Definitions:
  - **Diversity Level 3 or 4** - Level 3 units shall be sold for a total price no greater than 3.0 times the current low-moderate income limit for a given household size; Level 4 units shall be sold for a total price no greater than 3.25 times the current low-moderate income limit.
  - **Low-moderate Income** - Annual gross income that is less than or equal to 80% of the median income for households of the same size in Jefferson County, as published annually by the US Department of Housing and Urban Development
  - **Qualified Buyer** - A person whose household income for the last two years was 100% or less of the median household income for Jefferson County as reported annually by HUD
  - **Qualified Buyer Verification form** - A form, provided by the public agency handling Community Development and Home Funds and successor programs, that verifies that a person's household income for the past two years was 100% or less of the median household income for Jefferson County as reported annually by HUD.
  - **Qualified Neighborhood ‘A’** - Includes those census tracts defined by the most recent census as having more than 20% of households below poverty level
    - The site is located within Census Tract 113.02 whose poverty level for all family-households was 29%. Source: 2017 ACS 5-yr
- FY 2019 HUD Income Limits for Louisville, KY-IN Metro\*
  - Median Income - \$76,400
  - Low-to-moderate Income limits for Level 3:

|                         | 1 bedroom** | 2 bedroom | 3 bedroom | 4 bedroom |
|-------------------------|-------------|-----------|-----------|-----------|
| Income Limit (\$)       | 42,800      | 55,000    | 61,100    | 66,000    |
| Maximum Sale Price (\$) | 128,400     | 165,000   | 183,300   | 198,000   |

\*The Louisville, KY-IN HUD Metro FMR Area contains the following areas: Clark County, IN; Floyd County, IN; Harrison County, IN; Bullitt County, KY; Henry County, KY; Jefferson County, KY; Oldham County, KY; Spencer County, KY; and Trimble County, KY.

\*\*Household sizes shall be translated into house sizes as follows: one and two person households: 1 bedroom; three persons: 2 bedrooms; four persons: 3 bedrooms; five or more persons: 4 bedrooms.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the waiver does not result in the restriction of movement to adjacent properties or create access that is unsafe to nearby properties.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 (Land Use and Development Policies 2 & 3) as the use of the alley for a primary means of access does not result in access through areas of lower density or reduce mobility to the surrounding community. The use of the alley does not affect future improvements or burden public infrastructure.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the site does not contain frontage on E. Indian Trail. The subject property is separated from Indian Trail by a 50' public area.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) 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.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as both pedestrian and vehicular access has been provided to serve the lots.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare as the open space separates single-family lots from abutting single-family lots and a neighborhood asset is being preserved in the area of the open space.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as a 75' wide open space exceeds the minimum dimension required for landscape buffers between higher intensity and density uses and single-family properties within the Neighborhood form district. For instance, a high intensity commercial use would only require a 35' landscape buffer to a single-family property. Multi-family adjacent to single family requires a minimum 20' buffer.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the reduced width does not create unsafe circumstances for potential users within the area and the width exceeds other minimum standards for transitioning from one use to another.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as sufficient transition is provided between the subdivision and adjacent development.

#### ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the Alternative Development Incentives are being applied.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as sufficient transition is provided between the subdivision and adjacent development, the variance does not adversely affect public health, safety or welfare, and no nuisances are created.

3. 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.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred on the land to create non-compliance with the regulation.

#### REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Waiver** of Land Development Code (LDC), section 7.3.30.B to allow 3 lots to abut an alley and not a street
- **APPROVE** or **DENY** the **Variance** of LDC, section 4.5.6.B to reduce the required 75' open space lot width to 60'
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan (Alternative Development Incentives)** for the creation of 20 single-family lots

**NOTIFICATION**

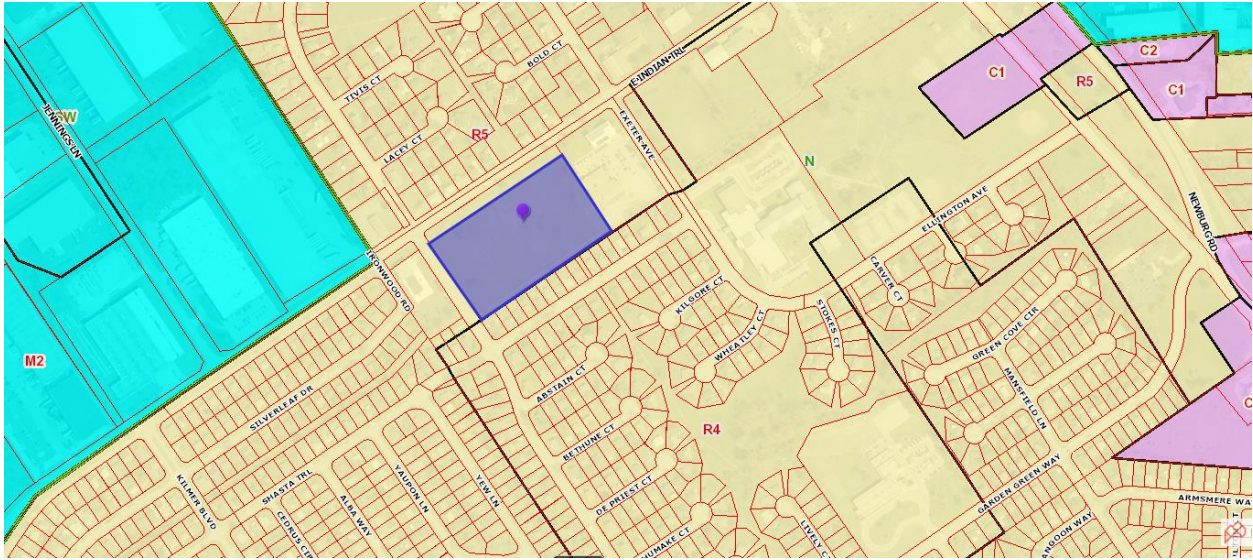
| Date               | Purpose of Notice   | Recipients  |
|--------------------|---------------------|---|
| 8/30/19<br>9/12/19 | Hearing before LD&T | 1 <sup>st</sup> tier adjoining property owners and those names supplied by the applicant<br>Subscribers of Council District 2 Notification of Development Proposals |
| 11/26/19           | Hearing before PC   | 1 <sup>st</sup> tier adjoining property owners and those names supplied by the applicant<br>Subscribers of Council District 2 Notification of Development Proposals |

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photographs
3. Proposed Conditions of Approval



1. **Zoning Map**



2. **Aerial Photograph**



### **3. Proposed Conditions of Approval**

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. 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."
3. Open space 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.
4. Permanent protection, preservation and maintenance of proposed open space and amenities shall be provided by legal instrument approved by the Louisville Metro Planning Commission's legal counsel and recorded with the record subdivision plat.
5. 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.
6. 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.
7. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
8. 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.
9. 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 filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
  - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
10. 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.
  11. Principal residential structures on lots 13-16 shall be oriented to face E. Indian Trail.
  12. A sidewalk easement agreement shall be submitted for review and approval to Planning Commission legal counsel for proposed sidewalk easement across lots 13-16. The agreement shall be recorded with the record subdivision plat.
  13. 10% of the lots within the subdivision shall be sold for a maximum sale price no higher than diversity level 3 or 4 to a Qualified Buyer as defined by the Land Development Code. This shall only be binding on the first sale only.
  14. The developer/owner shall be responsible for submitting an update report at 6-month intervals from the date of the recording of the record plat until the number of lots designated as Level 3 or 4 units have been sold. The update report shall identify the name of the recorded subdivision, the plat book and page number of the record plat, the actual lot numbers sold for Level 3 or 4, the name of the buyers, the type of units, the number of bedrooms, and the sale price of units. With the update report, the developer/owner shall submit deeds or other appropriate documentation and Qualified Buyer Verification Forms for all lots utilized to fulfill this incentive. These requirements shall be binding on the first sale only.