

**Planning Commission**  
**Staff Report**  
August 4, 2022



|                          |   |
|--------------------------|---|
| <b>Case No:</b>          | 22-AMEND-0002   |
| <b>Project Name:</b>     | Old New Cut Road Apartments Binding Element Amendment |
| <b>Location:</b>         | 6501 Old New Cut Road                                 |
| <b>Owner(s):</b>         | Newtown Woods LLC                                     |
| <b>Applicant:</b>        | LDG Development                                       |
| <b>Jurisdiction:</b>     | Louisville Metro                                      |
| <b>Council District:</b> | 13 – Mark Fox   |
| <b>Case Manager:</b>     | Dante St. Germain, AICP, Planner II                   |

**REQUEST**

- **Appeal of Land Development and Transportation Committee Action to Partially Deny Modification of Binding Elements**

**CASE SUMMARY/BACKGROUND**

The applicant proposes to amend the binding elements for case number 9-59-01/19-DDP-0039 on the site in order to not construct required road improvements prior to issuance of certificates of occupancy for the proposed units.

The binding element proposed to be revised is Binding Element #12(a) which reads:

- a. The first one hundred seventy (170) units may begin construction upon receipt of approval of a detailed district development plan and construction drawings. However no certificates of occupancy for these units may be requested until the following roadway improvements are completed by the developer:
  1. Addition of south bound right turn lane on New Cut Road at Old New Cut Road intersection.
  2. Widening of Old New Cut Road to three (3) lanes from New Cut Road to the west property line of the subject property.

The applicant proposes to revise the language to read:

- a. The first ~~one hundred seventy (170)~~ **two hundred forty (240)** units may begin construction upon receipt of approval of a detailed district development plan and construction drawings. However no certificates of occupancy for these units may be requested until the following roadway improvements are completed by the developer:
  - ~~1. Addition of south bound right turn lane on New Cut Road at Old New Cut Road intersection.~~
  - 1.** Widening of Old New Cut Road to three (3) lanes from New Cut Road to the west property line of the subject property.

The Land Development and Transportation Committee approved the change to the number of units in 12(a) but denied the request to omit 12(a)(1). The applicant therefore appeals this partial denial.

## **STAFF FINDING**

The Planning Commission must determine if the request is adequately justified and meets the standard of review. The Planning Commission must uphold or overturn the LD&T action to partially deny the request.

## **TECHNICAL REVIEW**

The site plan is unchanged and has previously been approved by MSD and Transportation Planning.

## **INTERESTED PARTY COMMENTS**

No interested party comments have been received by staff.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR AMENDMENT TO BINDING ELEMENTS**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The site currently includes tree canopy and a stream, which are being preserved as shown on the original site plan.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: 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 previously approved the site plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space is being provided per the requirements of the Land Development Code.

- d. 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;

STAFF: The Metropolitan Sewer District has previously 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.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The site plan is unchanged from the previously approved plan.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The site plan with the amended binding element would comply with the Land Development Code. The Planning Commission must determine if the revision complies with the Comprehensive Plan.

**REQUIRED ACTIONS:**

- **UPHOLD** or **OVERTURN** the Land Development and Transportation Committee Action to Partially Deny the Amendment to Binding Elements

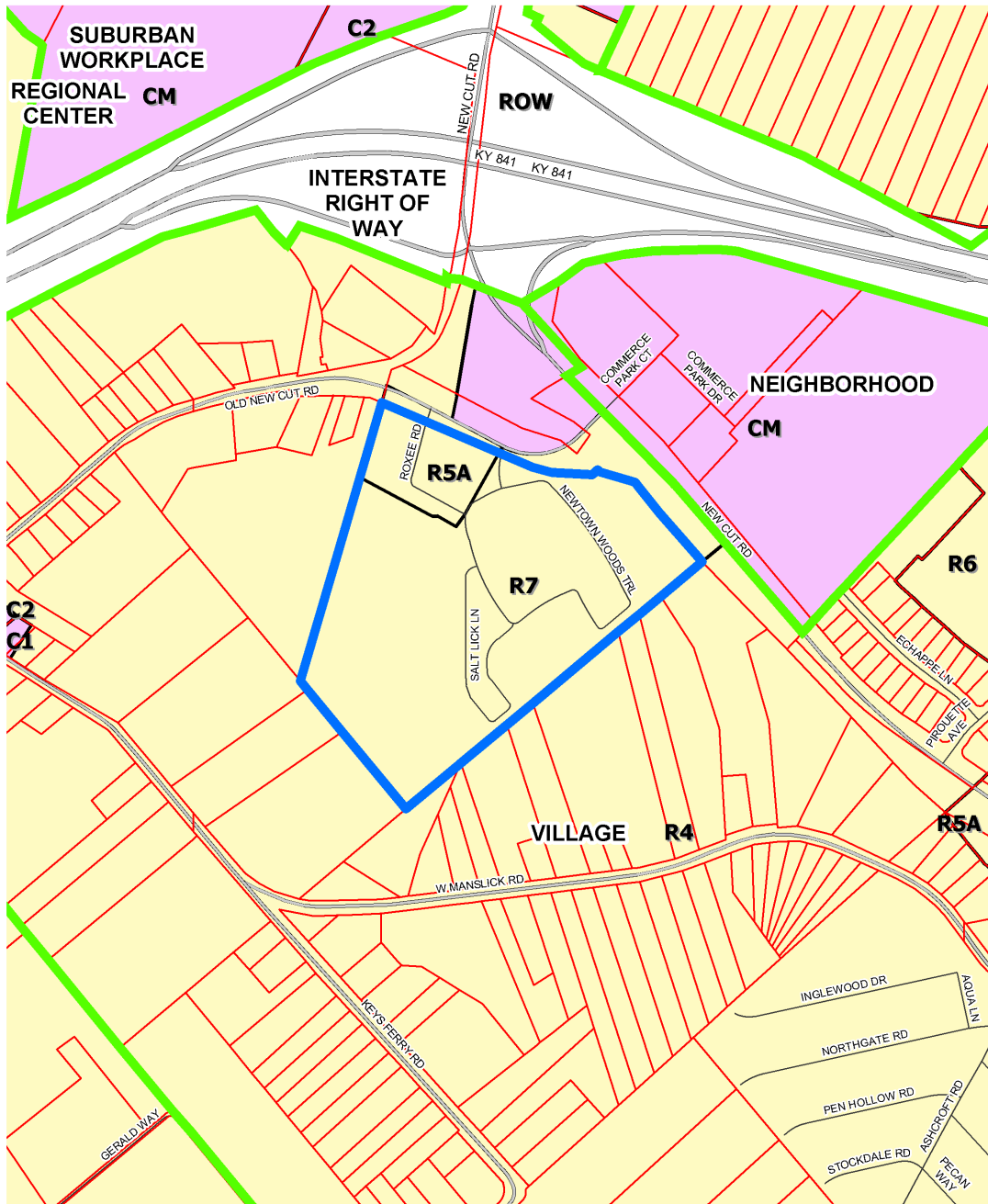
**NOTIFICATION**

| Date       | Purpose of Notice   | Recipients  |
|------------|---------------------|---|
| 06/09/2022 | Hearing before LD&T | 1 <sup>st</sup> tier adjoining property owners & current residents<br>Speakers at Planning Commission public hearing<br>Registered Neighborhood Groups in Council District 13 |
| 07/21/2022 | Hearing before PC   | 1 <sup>st</sup> tier adjoining property owners & current residents<br>Speakers at Planning Commission public hearing<br>Registered Neighborhood Groups in Council District 13 |

**ATTACHMENTS**

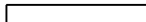
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements with proposed changes
4. Proposed Binding Elements

1. Zoning Map



6501 Old New Cut Road

feet



510

Map Created: 6/13/2022



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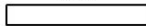


2. Aerial Photograph



6501 Old New Cut Road

feet



510

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### **3. Existing Binding Elements with proposed changes**

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 for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. 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.
4. The residential character of the structure shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission or it's designee:
  - a. roof line
  - b. building material
  - c. porch
  - d. windows
  - e. (Other items may be added at the time of development plan approval.)
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. 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.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - 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. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

8. 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.

9. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

10. 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.

11. The site shall be developed in accordance with the recommendations as described in the geotechnical report provided by Greenbaum Associates, Inc.

12. Roadway improvements:

a. The first ~~one hundred seventy (170)~~ **two hundred forty (240)** units may begin construction upon receipt of approval of a detailed district development plan and construction drawings. However no certificates of occupancy for these units may be requested until the following roadway improvements are completed by the developer:

~~1. Addition of south bound right turn lane on New Cut Road at Old New Cut Road intersection.~~

~~2.~~ **1.** Widening of Old New Cut Road to three (3) lanes from New Cut Road to the west property line of the subject property.

b. No certificates of occupancy for the next one hundred twenty-five (125) units may be requested until the substantial completion of the New Cut Road widening between Outer Loop and the Gene Snyder Freeway as determined by Louisville Metro Public Works.

c. No building permits may be obtained for the remaining one hundred twenty-five (125) units until final completion of the New Cut Road widening between Outer Loop and Gene Snyder Freeway.

#### **4. Proposed 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 for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.

3. 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.
4. The residential character of the structure shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission or its designee:
  - a. roof line
  - b. building material
  - c. porch
  - d. windows
  - e. (Other items may be added at the time of development plan approval.)
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. 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.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - 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. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
8. 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.
9. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
10. 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.

11. The site shall be developed in accordance with the recommendations as described in the geotechnical report provided by Greenbaum Associates, Inc.

12. Roadway improvements:

a. The first two hundred forty (240) units may begin construction upon receipt of approval of a detailed district development plan and construction drawings. However no certificates of occupancy for these units may be requested until the following roadway improvements are completed by the developer:

1. Widening of Old New Cut Road to three (3) lanes from New Cut Road to the west property line of the subject property.

b. No certificates of occupancy for the next one hundred twenty-five (125) units may be requested until the substantial completion of the New Cut Road widening between Outer Loop and the Gene Snyder Freeway as determined by Louisville Metro Public Works.

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