

## PLANNING COMMISSION MINUTES

January 6, 2022

### PUBLIC HEARING

### CASE NO. 21-ZONE-0127

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

Project Name: Flats at Bardstown

Location: 2100/2044 Buechel Bank Road & 4134 R Bardstown Road

Owner: Hook Family Land LLC

Applicant: Marian Development

Representative: Dinsmore & Shohl, PLLC.

Jurisdiction: Louisville Metro

Council District: 2 – Barbara Shanklin

Case Manager: **Julia Williams, AICP, Planning Supervisor**

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:**

01:08:38 Julia Williams presented the case and showed a Power Point presentation (See staff report and recording for detailed presentation.)

Commissioner Mims asked if there was sidewalk connectivity to the shopping center. Julia Williams explained it is fully connected and does have a consistent sidewalk up to the Buechel Bypass and went into more detail on the sidewalk connectivity to the development.

#### **The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, 101 South 5th Street, Suite 2500, Louisville, KY 40202

Ashley Bartley, 1046 East Chestnut Street, Louisville, KY 40204

#### **Summary of testimony of those in favor:**

01:17:00 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a PowerPoint presentation (see recording for detailed presentation.)

01:22:24 Ashley Bartley went into more detail on the proposed development plan and explained the revisions to the entrances.

01:26:09 Cliff Ashburner continued the presentation.

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Commissioner Brown noted the median would need to be pulled out of the public right-of-way.

#### **The following spoke in opposition to this request:**

Norma Howard, 2020 Buechel Bank Road, Louisville, KY 40218

Charisse Spalding, 2018 Buechel Bank Road, Louisville, KY 40218

#### **Summary of testimony of those in opposition:**

01:34:42 Norma Howard stated traffic concerns, explaining the traffic is already horrible in the area. Ms. Howard asked what is being done for the residents that already live on Buechel Bank Road and what compromises are being made to mitigate their concerns.

01:38:56 Charisse Spalding asked if there was a geological or geographical survey done about the plumbing, blasting, or sewage. Ms. Spalding stated concerns about drainage and flooding in the area. Ms. Spalding stated concerns about the traffic from the development and asked if a traffic survey was done.

#### **Rebuttal**

01:44:00 Cliff Ashburner addressed opposition explaining some of the issues are more systemic and beyond the scope of this development, particularly what is being done for the neighborhood. Mr. Ashburner said they will be dedicating a significant amount of right-of-way to the county to help with roadway improvements and that the entrance was widened so when Buechel Bank Road is widened in the future, a turn lane can be put in, and that they will be adding sidewalks in front of the development. Mr. Ashburner said Public Works did not have any concern about traffic being added to the area from this development.

Commissioner Howard asked if the representatives could address the flooding and sewage concerns of the opposition. Ashley Bartley explained how the drainage on the site will work to prevent flooding. Ms. Bartley also went into detail on the geotechnical survey and said that there won't be any blasting.

Commissioner Carlson asked if this was market rate housing or affordable housing. Cliff Ashburner said it will be affordable housing.

Binding Element #7 was read into the record to state, "Upon the development of the adjacent commercial property to the east as retail, restaurant, office, residential or any other use determined by the Planning Director, and within 90 days of a request by the Planning Director, a pedestrian connection shall be made by the developer from the subject site to the commercial property to the east."

**02:03:20 Commissioners' deliberation.**

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**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.**

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:

#### **Change in Zoning:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the proposed higher intensity district is located along a collector roadway with sidewalk connectivity to TARC service nearby along an arterial to the north and along a local road to the south. There is also pedestrian and vehicular connectivity to activity centers; and the proposed district is in an area that maintains higher intensities and densities along Buechel Bank Road; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the mainly vacant property is proposed to be rezoned to a district providing housing at appropriate locations. The site is connected to the activity center along Buechel Bypass and Bardstown Road; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because a wetland has been identified on the site. No development is occurring in the wetland area; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because a wetland has been identified on the site. No development is occurring in the wetland area; and 2100 Buechel Bank Rd., there is a circa 1940 masonry home located at 2044 Buechel Bank Rd. that is shown to be removed. The demolition of the structure could have an adverse effect on sites potentially eligible for the National Register. Land Use and Development Goal 4: Community Form in Plan 2040 stresses the protection of historic resources. Historic Preservation staff recommends adaptive re-use of the structure instead of demolition. If structures are over 50 years old and determined eligible for the National Register, as per Wrecking Ordinance Section 150.110, there will be a required 30-day hold on the issuance of the permit. The site is not historic even if the existing building is considered historic; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the proposed higher intensity use is connected to two nearby transit corridors and an activity center zoned for a variety of goods and

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services. The site is connected to an efficient public transportation system to the north and south of the site; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because the proposed district is located along a collector roadway where a mix of densities exist and where an activity center exists at the intersection of Buechel Bypass and Bardstown Road (an arterial roadway). Having mixed intensities and densities would not create a significant nuisance with respect to accessing the site; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the subject property is easily accessible by bicycle, car, transit, pedestrians and people with disabilities as public sidewalks and transit service are available and connectivity from the site to activity centers is readily available; and the sidewalk along the frontage will be a minimum of 5' wide; and all improvements to the right-of-way and/or dedication will be made as requested; and the roadway fronting the development site is intended to serve high volumes of vehicular traffic, public sidewalks are available, and transit service is accessible. The development is appropriately located to take advantage of the existing transportation network. Any additional improvements necessary as a result of traffic impact study for the development plan will be addressed; and any roadway improvement will be made with the proposal; and no direct access to high speed roadways is provided for individual units. One access point to the site will be provided; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because the site will be served by existing utilities or capable of being served by public or private utility extensions; and the development will have an adequate supply of potable water and water for fire-fighting purposes; and MSD has preliminarily approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because the site does not appear to contain unique landscape characteristics. Tree canopy will be provided as required; and the proposal will not negatively impact the groundwater; and a compensation basin is proposed to positively affect any floodplain issues; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposed district provides for appropriately located high density development between major transit corridors in the Neighborhood form district. The district remains consistent with the pattern of the corridor in provisioning for alternative forms of housing; and the proposed district and location support aging in place as distance and transit connectivity to nearby services and amenities reduce travel time to essential services; and

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**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal continues the existing pattern of mixed-intensity and density along the corridor that is connected to the neighborhood and nearby centers; and the subject site and proposed district provides safe and convenient access to employment opportunities and amenities as distance and transit connectivity to nearby services and amenities reduce travel time to essential services, employment, and amenities in the area and throughout Louisville Metro; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because the proposed district encourages fair and affordable housing by allowing a variety of ownership options and unit costs throughout Louisville Metro. The district expands opportunities for people to live in quality, variably priced housing in locations of their choice by enabling the provision of affordable housing in dispersed locations throughout Louisville Metro; and the proposed district allows for an increase in residential occupancy where none currently exists on the site; and the proposed zoning district allows for a variety of styles and methods of housing to provision the requested density and fair and affordable housing.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that Louisville Metro Council **APPROVE** the change in zoning for case 21-ZONE-0127 from R-4 to R-6 for the property located at 2100/2044 Buechel Bank Road & 4134 R Bardstown Road.

**The vote was as follows:**

**YES: Commissioners Mims, Brown, Clare, Howard, Carlson, Daniels, Seitz, Sistrunk, and Lewis.**

**NO: No one.**

**PRESENT: Commissioner Price.**

On a motion by Commissioner Carlson, seconded by Commissioner Seitz, the following resolution was adopted:

**Revised Detailed District Development Plan:**

**WHEREAS**, the Louisville Metro Planning Commission finds the environmental constraints identified on the site are located in an area where no development is occurring. There are no historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, the Commission further finds provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and has approved the entrance onto Buechel Bank Road; and

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**WHEREAS**, the Commission further finds the open space provided on the plan for the multi-family proposal meets the Land Development Code requirements and the needs of the development; and

**WHEREAS**, the Commission further finds 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 the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

**WHEREAS**, the Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

### **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. 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) is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.

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- b. 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.
  - c. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Buechel Bank 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.
  - d. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
  - 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.
  - f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 6, 2022 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. Upon the development of the adjacent commercial property to the east as retail, restaurant, office, residential or any other use determined by the Planning Director, and within 90 days of a request by the Planning Director, a pedestrian connection shall be made by the developer from the subject site to the commercial property to the east.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for case 21-ZONE-0127 along with the Binding Elements on pages 11 and 12 of the staff report with the revision of Binding Element #7 presented today along with the condition the median at the entrance be moved out of the public right-of-way, based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Mims, Brown, Clare, Howard, Carlson, Daniels, Seitz, Sistrunk, and Lewis.**

**NO: No one.**

**PRESENT: Commissioner Price.**