

PLANNING COMMISSION MINUTES  
July 21, 2022

**PUBLIC HEARING**

**CASE NO. 22-ZONE-0022**

Request: Change in Zoning from R-4 to R-5A with a District Development Plan with Binding Elements and a Waiver  
Project Name: 4490 and 4492 Brownsboro Rd  
Location: 4490 and 4492 Brownsboro Rd  
Owner: 4490 Brownsboro Rd, LLC.  
Applicant: 4490 Brownsboro Rd, LLC.  
Representative: Frost, Brown Todd  
Jurisdiction: Louisville Metro  
Council District: 7 - Paula McCraney  
**Case Manager: Jay Lockett, 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 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:**

01:56:08 Jay Lockett presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

Two proposed binding elements have been added:

**Proposed binding element #1:** The owner/developer shall be responsible for the installation, good repair and proper functioning of all roads within the development. Construction plans for all roadways shall be approved by Transportation Planning prior to commencing construction. Prior to the issuance of a Certificate of Occupancy of the first unit, the owner/developer shall file with Transportation Planning a bond instrument in an amount determined by the Director of Works and MSD to ensure fulfillment of this obligation. Release of this bond shall follow procedures outlined in Chapter 7 of the Land Development Code.

**Proposed binding element #2:** Developer agrees to construct a 6 foot tall privacy fence along the southern border of the property adjacent to the Coachgate community; however, the location of the fence shall be installed to limit the number of trees removed and maintain the existing tree canopy. The fence shall be constructed with the same

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material that developer uses for any fence it installs along the western border of the property. The final location can be shown on the approved landscape plan.

02:01:55 Laura Ferguson, legal counsel for the Planning Commission, asked if there had been any discussion about a possible binding element about this plan coming back before the Planning Commission if there was a future change in density/number of units. Mr. Lockett said there had not, but that might be a question for the applicant.

**The following spoke in support of the request:**

Tanner Nichols, Frost Brown Todd, 400 West Market Street Suite 3200, Louisville, KY 40202

Chris Brown, Bowman BTM, 3001 Taylor Springs Drive, Louisville, KY 40220 (signed in but did not speak)

**Summary of testimony of those in support:**

02:02:33 Tanner Nichols, the applicant's representative, presented the applicant's case and showed a Power Point presentation (See recording for detailed presentation.)

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

Randy Strobo, 730 West Main Street Suite 202, Louisville, KY 40202

Brenda Smith, 1201 Wellington Place, Louisville, KY 40207

Philip Lawver, 803 Perryman Road, Louisville, KY 40207

Helen Davis, 732 Wicklow Road, Louisville, KY 40207

**Summary of testimony of those neither for nor against ("Other"):**

02:10:09 Helen Davis, the Mayor of the City of Windy Hills, said she was present to answer any questions the Commission members had any questions. She said the City of Windy Hills had submitted a letter stating that they no longer oppose the development.

02:10:57 Phillip Lawver said his concern is regarding access into and out of the development off U.S. 42 (see recording for his detailed presentation.)

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02:12:50 Randy Strobo said he was present on behalf of the City of Windy Hills, and reiterated that the City no longer opposes the development.

02:13:24 Brenda Smith, President of the Coachgate HOA Board, said Coachgate is still concerned about drainage. She said Coachgate agrees with the developer that the fencing would be a privacy fence that would be of the same construction and materials as that which will be on the west side (see recording for her detailed presentation.)

**The following spoke in opposition to the request:**

Kim Greenrose, 712 Victoria Place, Louisville, KY 40207

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

02:16:10 Kim Greenrose said the building designs/elevations being proposed are incompatible with the rest of the neighborhood; she also expressed concerns about drainage and turning lanes.

**Rebuttal:**

02:22:16 Mr. Nichols delivered rebuttal (see recording for detailed presentation.)

02:24:43 In response to a question from Commissioner Mims, Mr. Nichols and Mr. Luckett discussed the reasons for the requested parkway setback waiver (see recording.) Mr. Luckett added that the applicant will be providing the full 50-foot required buffer.

02:27:04 In response to a question from Commissioner Howard, Mr. Nichols said the applicant has agreed to a binding element regarding fencing. Mr. Luckett discussed binding element #3E.

02:28:36 In response to a question from Commissioner Brown, Mr. Luckett discussed a bond requirement for the roadways. Joe Reverman, Assistant Director of Louisville Metro Planning & Design Services, also discussed the issue and said there is a proposed binding element regarding roadways, to read as follows:

The owner/developer shall be responsible for the installation, good repair and proper functioning of all roads within the development. Construction plans for all roadways shall be approved by Transportation Planning prior to commencing construction. Prior to the issuance of a Certificate of Occupancy of the first unit, the owner/developer shall file with Transportation Planning a bond instrument in

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an amount determined by the Director of Works and MSD to ensure fulfillment of this obligation. Release of this bond shall follow procedures outlined in Chapter 7 of the Land Development Code.

02:31:22 Commissioner Brown asked if there was a proposed binding element regarding density.

**Deliberations:**

02:32:45 Commissioners' deliberation.

**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.**

**Zoning**

02:33:00 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the subject site is on Brownsboro Rd, a major arterial roadway. Brownsboro Rd has transit service and a generally complete sidewalk network. There are nearby employment opportunities, as well as multiple commercial centers in the vicinity; and the proposal shows an encroachment into the Parkway setback standards. The development will provide the full width of the Parkway Buffer including the preservation of several mature trees in the area. Adequate buffering has been provided adjacent to properties of differing intensities; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the proposed zoning change would allow for additional housing options in the area; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because the subject site does not appear to have any significant environmental constraints; and

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**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the proposal includes the preservation of several mature trees on the subject site; and the subject site does not contain any historic resources; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the subject site is served by existing transit on Brownsboro Rd. The site is within a mile of two different commercial areas, including significant development near the Watterson Expressway; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because The site proposes private access directly from Brownsboro Road; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because Brownsboro Rd allows for ready access to a multimodal transportation network. The proposed zoning district would allow for additional housing options within an area well-served by transit and near employment opportunities; adequate roadways exist adjacent to and near the subject site; Brownsboro Rd has sidewalks adjacent to the subject site and transit service is available with the nearest stop in front of the adjacent property at Tunbridge Wells Land; adequate transportation facilities exist to serve the site; the proposed zoning is compatible with existing and proposed transportation networks in the area; and the site proposes direct private access to Brownsboro Road; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because utility services will be coordinated; water service will be coordinated with appropriate agencies; and sewer service will need to be coordinated with MSD. MSD has approved the preliminary plan; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because the applicant proposes to preserve several mature trees around the subject site; a karst survey on the site revealed know observable karst features; and the subject site is not within the floodplain; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposed zoning would allow for a variety of housing types. The development and will fit within the residential development pattern of the district, which has a variety of residential zoning districts, densities and housing types; and the proposed zoning district will help promote aging in place by providing



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additional housing type options. The site is served by transit and close to a variety of commercial uses; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because the proposed zoning district would promote mixed income and intergenerational development by allowing for additional housing types in an area with access to a variety of commercial services, amenities and employment opportunities; and Brownsboro Rd provides ready access to a multimodal transportation network that provides safe and convenient access to employment opportunities, services and amenities; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because the proposed zoning encourages the provision of fair and affordable housing by allowing for a variety of housing types, ownership options, lotting patterns and unit sizes; the proposed zoning district would not displace current residents; and the proposed zoning would allow for a variety of lotting patterns and unit types, allowing for production of fair and affordable housing; now, therefore be it

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

**The vote was as follows:**

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

**Waiver from the Land Development Code section 10.3.5.A.7 to reduce the 75-foot parkway setback to 50 feet.**

02:33:47 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the applicant will provide the full parkway

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buffer with all required screening and plantings. There are a variety of setbacks in the area, including nearby sites with significantly larger encroachments into the setback and buffer; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as adequate screening and planting will be provided, including the preservation of mature trees within the buffer area; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the applicant will provide the full width of the required parkway buffer; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the applicant to lose at least two dwelling units on their site; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from the Land Development Code section 10.3.5.A.7 to reduce the 75-foot parkway setback to 50 feet.

**The vote was as follows:**

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

**Detailed District Development Plan**

02:34:36 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject 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

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**WHEREAS**, the Commission further finds that the site meets all open space requirements of the Land Development Code including recreational open space requirements; and

**WHEREAS**, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

**WHEREAS**, the Commission further finds that the overall site design 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; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; 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. 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 designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:



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- a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. A minor subdivision plat or legal instrument shall be recorded (creating the lot lines as shown on the approved development plan)
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance
  - e. 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.
4. 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.
  5. 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.
  6. The owner/developer shall be responsible for the installation, good repair and proper functioning of all roads within the development. Construction plans for all roadways shall be approved by Transportation Planning prior to commencing construction. Prior to the issuance of a Certificate of Occupancy of the first unit, the owner/developer shall file with Transportation Planning a bond instrument in an amount determined by the Director of Works and MSD to ensure fulfillment of this obligation. Release of this bond shall follow procedures outlined in Chapter 7 of the Land Development Code.

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7. Developer agrees to construct a 6 foot tall privacy fence along the southern border of the property adjacent to the Coachgate community; however, the location of the fence shall be installed to limit the number of trees removed and maintain the existing tree canopy. The fence shall be constructed with the same material that developer uses for any fence it installs along the western border of the property. The final location can be shown on the approved landscape plan.

**The vote was as follows:**

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