

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1074

Request: Change in zoning from R-4 and PRD to R-6 with a Variance and a District Development Plan
Project Name: Avoca Road Apartments
Location: 12201 and 12207 Avoca Road
Owner: Fetter Properties LLC.; Joseph and Karoll Foreman
Applicant: LDG Development
Representative: Mindel Scott and Assoc.; Dinsmore and Shohl
Jurisdiction: Louisville Metro
Council District: 19-Julie Denton
Case Manager: Julia Williams, RLA, AICP, Planning Supervisor

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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

An audio/visual recording of the Planning Commission meeting 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.

Agency Testimony:

01:23:25 Julia Williams presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Clifford Ashburner, 101 S 5th Street, Suite 2500, Louisville, KY 40202

Summary of testimony of those in favor:

01:30:20 Clifford Ashburner spoke on behalf of the applicant who is requesting a change in zoning from R-4 and PRD to R-6 along with a variance and a district development plan (see recording for detailed presentation).

The following spoke in opposition to the request:

Marv Blomquist, 10529 Timberwood Circle, Suite D, Louisville, KY 40223

Summary of testimony of those in opposition:

01:47:00 Marv Blomquist spoke on behalf of the opposition, which includes Mr. and Mrs. Dobbins, owners of Parker Hollow LLC. One major concern of the opposition is

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the increase in traffic around the Parker Hollow buildings and the access easement. They feel that there will be an increase in large trucks cutting through their property in order to use English Station Road to turn around which could cause a safety problem for future tenants. The development of the apartments will also create undue financial hardship for the Dobbins family who would have to make improvements along Avoca Road. Mr. Blomquist asked the Commission to consider a binding element that would restrict or prohibit vehicular access to their property from the apartment complex. And if they are to be required to improve Avoca Road, they would like to postpone this until they choose develop that portion of their property, or they would like the applicant to pay for improvements.

02:06:30 Chair Jarboe expressed concern with breaking an agreement that was established in the past. And he does not feel that future tenants will cut through the Parker Hollow property to exit the apartment complex. He suggested the applicant place speed bumps through this access if they feel that this will be an issue.

02:08:55 Mr. Blomquist acknowledged that few people may use the property as a cut through, but if any do, the day to day operations of the business will be greatly hindered. It does not make sense to connect an apartment complex to an industrial complex.

Rebuttal:

02:18:55 Mr. Ashburner stated that the easement was granted in 2008. He cannot be certain that the entrance will or will not be constructed at this time, but it is the right of the applicant to do so. Regarding the access easement and improvements to Avoca Road, he feels these should be discussed in front of the Commission at a later time.

02:25:36 Commissioners' deliberation

Change in zoning

02:31:11 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Commission further finds that, based on the staff report and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-4 and PRD to R-6 be **APPROVED**.

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The vote was as follows:

Yes: Brown, Carlson, Lewis, Smith, Ferguson, Tomes, Lindsey and Jarboe

Absent: Howard and Peterson

Abstain: None

No: None

02:31:50 On a motion by Commissioner Brown, seconded by Vice Chair Lewis, the following resolution was adopted:

Variance

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare since the variance is for 3' more than the requirement. The development is also adjacent to a mix of compatible uses, including a park and fire station, and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures, and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures, and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures, and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures, and

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WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures, and

WHEREAS, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

District Development Plan

WHEREAS, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site and existing tree canopy is being preserved, 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 the open space proposed is in compliance with the Land Development Code 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. Buildings and parking lots will meet all required setbacks, 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, and

WHEREAS, the Commission further finds that, based on the staff report and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 are being met; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE (1)** the variance from Chapter 5.3.1.C to allow a 38' building height instead of the required 35' (3' variance) and **(2)** the district development plan, **SUBJECT** to the following binding elements:

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. 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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Avoca 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; transmittal of 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - 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; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining

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property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

- f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 15, 2017 Planning Commission meeting.
7. The applicant shall file a formal street closure application for the portion of Avoca Road to the west of the entrance to the subject property before approval of any construction plans for the proposed development. The applicant shall, should Louisville Metro Government approve the street closure application, remove all pavement from the portion of the road that is closed.
8. The developer shall contribute their prorated portion, not to exceed \$7,700 to the cost of the signal installation at Aiken Rd and N. English Station Rd. This shall be paid within 30 days of the request by the Director of Louisville Metro Public Works.
9. Prior to any site disturbance, the cemetery boundaries shall be defined by a qualified archeologist and documentation of the cemetery boundaries shall be submitted to Planning and Design staff. After the boundary has been approved, all buildings and structures shall be set back at least 30' from the cemetery boundary. The buffer shall

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be delineated with the installation of temporary fencing during construction. As soon as practical, the owner/developer is required to erect a new permanent fence made of material compatible with the character of the existing cemetery and the surrounding residences.

The vote was as follows:

Yes: Brown, Carlson, Lewis, Smith, Ferguson, Tomes, Lindsey and Jarboe

Absent: Howard and Peterson

Abstain: None

No: None

