

PLANNING COMMISSION MINUTES

January 9, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0026

Request: Change in zoning from R-4 to PRD, with Detailed District Development Plan / Major Preliminary Subdivision and Binding Elements, and associated rear yard waiver

Project Name: Cedar Heights Subdivision

Location: 8700 Smith Lane

Owner: Smith Lane Property LLC

Applicant: Smith Lane property LLC

Representative: John Talbott, Bardenwerper Talbott & Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 22 – Robin Engel

Case Manager: Dante St. Germain, 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:

01:56:49 Dante St. Germain presented the case and showed a Power Point presentation (See staff report and recording for detailed presentation.)

The following spoke in support of this request:

John Talbott, Bardenwerper Talbott & Roberts, PLLC, 1000 North Hurstbourne Parkway
2nd Floor, Louisville, KY 40223

Curtis Mucci & David Mindel, Mindel Scott & Associates, 5151 Jefferson Boulevard,
Louisville, KY 40219

Robert Allen, 15302 Crystal Springs Way, Louisville, KY 40245

Bobby Coomer, 130 Sunbeam Court, Shepherdsville, KY 40165

Kenneth Stribling Jr., 9517 Barn Road, Louisville, KY 40291

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Robbie Brueck, 197 Trammel Road, Baghdad, KY 40003

Tim Lingerfelt, 1835 San Jose Avenue, Louisville, KY 40216

Summary of testimony of those in support:

02:03:01 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

02:06:19 Mr. Talbott called Mr. Allen to the podium to testify and answer some questions from him. Mr. Allen told the Commission when he bought the property and how he cleaned it up and improved it; the donation of some property to the Fern Creek Optimist Club; what kinds of residents they are marketing to (long-term residents who own their own homes / no renters); and traffic flow.

02:10:56 Mr. Talbott resumed his presentation.

02:20:37 Bobbie Coomer spoke in support. He said the Allens have greatly cleaned up and improved the mobile home park.

02:23:33 Kenneth Stribling was called but was not present (had to leave.)

02:23:41 Robbie Brueck was called but did speak (available to answer questions if needed.)

02:23:50 Tim Lingerfelt was called but did not speak (available for questions if needed.)

02:24:33 Commissioner Carlson asked about the types of manufactured homes planned for the site and the regulations for them. Binding element #3 was discussed in relation to manufactured housing. Rob Brueck said the homes are inspected by the Kentucky Manufactured Home Association. The homes must be inspected before anyone is allowed to live in them. Inspection and regulation protocols were discussed (see recording.) The alignment of the homes to the road was discussed.

02:34:30 In response to a question from Commissioner Mims, Mr. Talbott said this proposal is a subdivision, not a continuation of an existing mobile home park.

02:35:25 In response to a question from Commissioner Mims, Emily Liu, Director of Planning & Design Services, discussed "manufactured home" regulations and noted

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that these homes are allowed in single-family-zoned districts. She explained the State and HUD national standards, which are applied at the factory and on the site.

02:37:40 Mr. Talbott and Commissioner Carlson discussed landscaping. Commissioner Brown asked if there was anything in the site design guidelines specifying that houses have to be oriented towards the street. Ms. St. Germain said there are in *Traditional* form districts, but this is a Neighborhood form district.

02:41:17 In response to a question from Commissioner Tomes, David Mindel testified about landscaping (see recording for detailed discussion.) Mr. Mindel noted that, currently, this site has no trees at all. Commissioner Tomes discussed his experience with manufactured homes (State approvals, inspection procedures, building permits, etc.) Mr. Mindel added that these will be public roads, curb-and-gutter, and underground utilities.

02:45:43 In response to a question from Commissioner Mims, Mr. Mindel pointed out a road that is going to be eliminated.

02:46:49 In response to a question from Commissioner Brown, Mr. Mindel said driveways would be provided from the road. Commissioner Brown said that, because these are public roads with a 15-foot setback, he would request a note on the plan requiring the driveway to be at least 25 feet from the back of the ROW to the garage.

The following spoke in opposition to this request:

No one spoke.

02:47:29 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

02:52:20 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Staff Plan 2040 checklist, the applicant's justification, and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Community Form: Goal 1 because the proposal is not for a higher density or intensity use. The gross density of the site is proposed to be 4.79 du/acre. The proposal is not for a substantially different scale or intensity or density of development compared with the adjoining residential mobile home park. Appropriate transitions will be provided to the adjacent athletic fields; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 2 because the proposed zoning district will allow for new residential uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 3 because no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 4 because no distinctive cultural features are evident on the site and no historic assets are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 1 because the proposal is not for a higher density or intensity use; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 2 because access to the site will be achieved via Smith Lane, a local-class, state road that parallels I- 265; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 3 because the proposal will encourage a mixture of compatible land uses in the neighborhood; Transportation Planning has approved the proposal; and no direct residential access to high-speed roadways is proposed; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Livability: Goal 1 because the site is currently cleared and tree canopy will be required to be added to the site; a karst survey of the site revealed no karst features; and the site is not located in the regulatory floodplain; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 1 because the proposed zoning district would permit a variety of housing types; and the proposed zoning district would support aging in place by increasing the variety and affordability of housing in the neighborhood; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 2 because the proposed zoning district would permit inter-generational and mixed-income development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 3 because the proposed zoning district would encourage the provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro; no existing residents are located on the property and no existing residents will be displaced by the proposal; and the proposed zoning district would permit the use of innovative methods of housing; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 1, and specifically with Objectives and Policies 2, 4, 5, 9, and 11 of Goal 1, because this proposal will provide this area with new, attractive, housing choices for residents who desire to live in this community but prefer lower cost, affordable housing with smaller lots. Homes will be constructed of attractive building materials (vinyl siding) and will feature architectural details similar to those in other nearby residential areas in order to ensure that the scale and appearance of this community will be compatible with the existing communities in this area; and setbacks, lot dimensions, and building heights will be consistent with the mobile home park nearby and that meet the Form District Guidelines. At the same time, the lot size will provide a diversity of densities since many of the nearby residential areas comprise larger lots sizes. The site itself abuts a mobile home park, soccer fields and the 1-264 expressway, utilizing an underused property for an economically needed use; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 2, and specifically with Policy 9 of Goal 2, because the proposed development is an infill development providing new housing within the southcentral portion of Louisville Metro; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 3, and specifically with 1, 2, 3, 6, 8, 10, 12 and 9 of Goal 3 because the proposed development has been designed to avoid wet soils and it is located on a flat portion of land, avoiding steep slopes and unstable soils. There are no wet or highly permeable soils, severe, steep or unstable slopes on the subject property that would create erosion problems. The development plan further

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incorporates open space into the subdivision and development that can be visually enjoyed by the community and ensures transitions between the various surrounding properties; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies 1, 3, 4 of Goal 1 because this proposed rezoning will cater to those potential apartment renters and owners that enjoy a healthy lifestyle through pedestrian travel and through bicycle as a means of transit. Sidewalks are being added to the property to provide pedestrian connections for easy walkability to the adjoining mobile home park. This proposed higher density residential use is located in very close proximity to the marketplace corridors along Bardstown Road, as well as the employment centers in downtown Louisville through its proximity to the interstate road system; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 2, and specifically with 4, 5, and 6 of Goal 2 because the proposed development will avoid access to development through areas of significantly lower intensity as it will connect with Barn Rd. and have the mobile home park and soccer fields and the immediate neighbors. The entrances will also be compliant with all requirements in the Land Development Code and Metro Works to ensure that all sight lines for entrances will be compatible with traffic, speed, terrain, etc. in street design; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 3, and specifically with 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 14 of Goal 3 because the proposed redevelopment of this underutilized property and undeveloped land into a new and vibrant residential community will provide new housing stock critically needed by Louisville Metro to allow its continued growth and also reduce vehicle miles traveled for those moving to the area through its proximity to the previously mentioned employment centers and marketplace options. The subject properties close proximity to the Bardstown Rd. corridor will also help eliminate multiple automobile trips for services offered in that commercial area. Due to this development's opportunity for pedestrian and bicycle travel, this proposal will have a fraction of the demand on the public transportation network that a new development in the outer portions of Louisville Metro would have on this network. The additional residential lots this development would provide would also help create a larger demand for the existing public transportation options in the Bardstown Road area; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 2, and specifically with 1, 2, and 3 of Goal 2 because the subject property is currently served by existing utilities and has adequate

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capacity for this proposed development as will be confirmed through all utility providers through this rezoning process. These confirmations specifically include the Louisville Water Company's confirmation of sufficient water service capacity and the Metropolitan Sewer District's confirmation of adequate sanitary capacity; and

WHEREAS, the Commission further finds that the proposal meets the intents of the Goals, Objectives and Policies of Goals 1 & 2 to the extent that it provides affordable housing options, diversifying the current type of housing available, and thus supporting a diverse and highly skilled work-force in the Louisville Metro community; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 1, and specifically with 5, 10, 17, 21, 31, 32, and 35 of Goal 1 because there are no streams or existing groundwater on the subject property and the surface water runoff will be improved from its current condition through the detention and water quality as shown on the DDDP. The added detention and water quality unit will not only help mitigate the impacts of this development but likely help with the existing floodplains in the area to the extent same exist; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 1, and specifically with Policy 1 and 3 of Goal 1 because, as stated previously, the proposal is for a new and different housing option for the area, being affordable new manufactured construction residential lacking in Louisville Metro which has the qualities of much higher priced residential, being quiet, family-oriented, safe, and clean environment; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 2, and specifically with 1, 2 and 7 of Goal 2 because this affordable form of residential development provides a housing option for a mixture of residents, including the new family, single persons, and older homeowner that wants to live in close proximity to services near Bardstown Rd. and the Interstate system, and those persons of all ages and incomes that want to live in high-quality, but affordable living environment; and

WHEREAS, the Commission further finds that the proposal meets the intents of the applicable Objectives and Policies of Goal 3, including 1, 2, 3, 4, 6, 8, 12 because the proposed development will be a different housing option with the ability to rent a lot and a manufactured home, or bring their own manufactured home, than more traditional single-family residential lot that predominates throughout the surrounding area, and thus will have a different and more affordable price point. The proposed development will also have a mixture of housing options, which includes the small and most affordable small manufactured home, to the larger, manufactured home with more amenities. This

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type of housing options will also help by providing multiple options for the existing residents in the area that want to raise families as well as age in place and in their community in an affordable, safe, quiet, and clean environment; now, therefore be it

RESOLVED, 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 PRD Planned Residential Development on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Tomes, Howard, Peterson, Brown, Daniels, Carlson, Mims, and Lewis.

NOT PRESENT: Commissioner Jarboe.

Waiver

02:53:09 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 rear yard overlap with a drainage easement will only affect the property owners of the new lots; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address drainage easements, and addresses yard requirements only as buffers between incompatible uses. The adjacent uses are not incompatible with the proposed use; 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 overlap is made necessary by a drainage easement to the rear of the new lots, which is the appropriate place for a drainage easement; and

WHEREAS, the Commission further finds that 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 by requiring the applicant to move the

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easement or extend the rear yards, either of which would reduce the usability of the property; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested waiver from LDC section 7.3.30.E to allow more than 15% of a rear yard of a buildable lot to be occupied by a drainage easement (19-WAIVER-0030).

The vote was as follows:

YES: Commissioners Tomes, Howard, Peterson, Brown, Daniels, Carlson, Mims, and Lewis.

NOT PRESENT: Commissioner Jarboe.

Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements

02:53:49 On a motion by Commissioner Brown, seconded by Commissioner Carlson, 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 historic resources or natural resources on the subject site. Required tree canopy will be provided; 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 required open space is being provided; 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

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WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The proposal is for single-family development, which is compatible with the neighborhood; 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 with the exception of the requested waiver; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements, **ON CONDITION** that a note is added to the plan to read, "Driveways shall be a minimum of 25 feet in length from the edge of the right-of-way to the back of the driveway." and **SUBJECT** to the following 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. 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.
3. 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.
4. 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,

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contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

5. The applicant shall submit a Tree Preservation Plan for approval by Planning and Design staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
6. 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.
7. 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."
8. Open space lots 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.
9. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for "Street A". Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
10. 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.
11. 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

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treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.

12. 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 in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 - c. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
13. At the time the developer turns control of the homeowner's 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.

The vote was as follows:

YES: Commissioners Tomes, Howard, Peterson, Brown, Daniels, Carlson, Mims, and Lewis.

NOT PRESENT: Commissioner Jarboe.