

PLANNING COMMISSION  
March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

Request: Change in Zoning from R-4 to R-6, with Detailed District Development Plan with Binding Elements  
Project Name: Mud Lane Apartments  
Location: 3902 Mud Lane  
Owner: Hubert L. Hester Living Trust  
Applicant: Hubert L. Hester Living Trust  
Representative: Wyatt, Tarrant and Combs  
Jurisdiction: Louisville Metro  
Council District: 13 - Dan Seum, Jr.  
Case Manager: Jay Lockett, AICP, Planner II

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:**

00:05:32 Jay Lockett presented the case and showed a Power Point presentation (see recording for detailed presentation.)

00:08:30 Mr Lockett read a proposed binding element into the record, as follows:

If permitted by KYTC, the developer, applicant, or property owner shall install or fund the installation of all will stop signs at the intersection of Mud Lane and Blue Lick Road, including the installation of stop signs [unintelligible] roadways if necessary.

00:09:56 In response to a question from Commissioner Cheek, Beth Stuber, Metro Traffic Engineer, said that Metro cannot stop traffic on Blue Lick Road without KYTC's permission, due to jurisdictional issues. Mr. Lockett said that a right-turn-only lane may be possible but ROW issues may prohibit this (see recording for detailed discussion.)

00:11:23 Commissioner Mims and Ms. Stuber discussed KYTC and other transportation issues (see recording.)

00:12:51 Commissioner Carlson, Ms. Stuber, and Mr. Lockett discussed the turn lane potential and ROW issues at Mud Lane & Blue Lick Road.

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

Jon Baker, Wyatt Tarrant & Combs, 400 West Market Street Suite 2000, Louisville, KY 40202

Derek Triplett, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Curt Greenwell, 1545 Hibbs Lane, Coxs Creek, KY 40013

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

00:15:37 Jon Baker, the applicant's representative, presented the applicant's case and showed a Power Point presentation (See recording for detailed presentation.)

00:21:03 Derek Triplett, an applicant's representative, presented details about the proposed site plan (see recording for detailed presentation.)

00:25:42 Mr. Baker presented the Traffic Impact Study Report and additional traffic pattern information.

00:32:43 Curt Greenwell said he was present to answer any questions.

00:33:03 In response to questions from Commissioner Mims, Ms. Stuber discussed the timeline for the KYTC Mud Lane project (still in the development stage; no timeline.) Mr. Triplett said the treed area shown on the plan is a variable MSD easement. Mr. Triplett also discussed whether the Hesters own the property on the north side of the Mud Lane/Blue Lick Road intersection (they do not; see recording for detailed discussions.)

00:36:19 In response to questions from Commissioner Carlson, Mr. Triplett discussed methods of tree preservation during construction (fencing, etc.) See recording for detailed discussion.

00:38:07 In response to questions from Commissioner Clare, Mr. Baker discussed pedestrian access, and other multi-family developments in the area.

00:39:14 In response to questions from Commissioner Howard, Mr. Greenwell discussed the properties of fiberboard (used on the exterior of the proposed structures.)

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00:39:56 In response to questions from Commissioner Sistrunk, Mr. Greenwell said there will be a mix of materials and colors on the buildings.

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

No one spoke.

**Rebuttal:**

00:41:21 Mr. Baker followed up with Commissioner Sistrunk regarding the buildings' exterior designs. He also discussed other multi-family developments in the area.

00:43:07 In response to questions from Commissioner Howard, Mr. Baker said there is no TARC service to this area of Mud Lane. Mr. Lockett confirmed that development plans are sent to TARC for review.

00:44:32 In response to questions from Commissioner Mims, Mr. Lockett said there is currently no back entrance into Commerce Crossing from Mud Lane, although that might be possible in the future.

**Deliberations:**

00:45:07 Commissioners' deliberation.

00:54:00 Commissioner Carlson and Mr. Lockett discussed the proposed binding element #7 regarding stop signs, or possibly a turning lane (see recording for detailed discussion.) Commissioner Howard noted that, if KYTC finds some issue with the development proposal, KYTC will make decisions about Mud Lane, not the Planning Commission.

00:57:30 Commissioner Mims and Mr. Lockett discussed binding elements regarding stop signs; if a right-turn lane is necessary, the developers need to contribute a dollar amount; and a binding element related to three/four different patterns of color on the buildings. Laura Ferguson, legal counsel for the Planning Commission, said that building design could be addressed by adding some language to existing proposed binding element #3 D (in italics, below) to state:

3D. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall use at least three color variations for the buildings, and shall be substantially similar to those presented at the March 2, 2023 Planning Commission public hearing. A copy of the approved rendering

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shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

00:59:25 Mr. Lockett and Ms. Stuber discussed the stop sign issue. Ms. Stuber said that, according to the traffic study, the percentage of traffic through the Mud Lane / Blue Lick Road intersection is "pretty slim". Commissioner Clare suggested altering the binding element to state that the applicant could contribute a dollar amount towards "intersection alterations", rather than specifying stop signs, etc. See recording for detailed discussion.

01:02:27 Discussion regarding binding element #7.

01:03:21 The Commission came out of Business Session to allow Mr. Baker to confirm **on the record** that the applicant is willing to agree to revised binding element #7. Mr. Baker said yes. Binding element #7 was revised to read as follows:

Unless the Kentucky Transportation Cabinet allows for the applicant/developer to install an all-way-stop condition at the intersection of Mud Lane and Blue Lick Road, the applicant/developer and/or the property owner shall provide Louisville Metro Public Works with a financial contribution for the necessary upgrade/improvements to the intersection. The developer shall make a contribution not to exceed \$15,000 towards the overall cost of the necessary intersection improvements which is consistent with the traffic growth associated with the Mud Lane Apartments, and the proportional impact of the traffic generated by the Apartments will have on the intersection as identified by the Traffic Impact Study Report for 3902 Mud Lane Apartments prepared by Adam Kirk Engineering on October 7, 2022 and revised on January 9, 2023. Developer shall provide said contribution within 60 days from when Metro Public Works requests it. The obligation to pay the contribution shall sunset 10 years from the date of Metro Council's final action on the zoning application.

**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.**

**Change-in-Zoning from R-4, Single-family Residential to R-6 Multi-family residential**

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01:09:56 On a motion by Commissioner Mims, 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 approximately 2000 feet from Blue Lick Rd, and about 1 mile from commercial development at Preston Highway. The Commerce Crossings development lies within a mile of the site and contains a wide variety of employment opportunities; and adequate transitions in the form of buffering and screening will be provided adjacent to uses of a lower intensity. The applicant is proposing to preserve mature trees within buffer areas along the rear of the site; 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 site has potential for wetlands and hydric soils. The applicant is minimizing disturbance of sensitive areas on the subject site by utilizing a single crossing point to the rear portions of the site; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the subject site does not have any distinctive cultural features. The applicant is proposing tree preservation within buffer areas along the rear of the 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 not served by transit. The site is approximately 1 mile from suburban marketplace corridor and employment centers along Preston Highway; and

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

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the proposed zoning district would allow for additional housing options within an area near employment opportunities and a commercial corridor; adequate roadways exist adjacent to and near the subject site.

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The applicant will provide sidewalks in the adjacent right-of-way; adequate transportation facilities exist to serve the site. The applicant will construct sidewalks in the adjacent right-of-way; the proposed zoning is compatible with existing and proposed transportation networks in the area; and the site proposes direct private access to Mud Ln. Right-of-way dedication may be required to accommodate the proposed development; 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 MSD has approved the preliminary development plan; and

**WHEREAS**, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because the applicant is proposing to preserve mature trees within the buffer areas along the rear of the site, as well as within the floodway areas along the front of the site; a karst survey has been performed with no karst features observed on site; and disturbance of sensitive areas is minimized in accordance with Comprehensive Plan goals and policies; 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 additional housing type options. The site is close to a variety of commercial uses; and

**WHEREAS**, the Commission further finds that 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 Mud Ln provides ready access to a 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

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**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 R-6 Multi-family residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

**YES: Commissioners Clare, Pennix, Mims, Cheek, Howard, Carlson, Fischer, Sistrunk, and Lewis.**

**ABSENT: Commissioner Brown.**

**District Development Plan with Binding Elements**

01:10:54 On a motion by Commissioner Mims, 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 subject site has some areas of wetlands and floodway on the subject site. The applicant is remediating the non-jurisdictional wetland areas, while limiting disturbance of the most sensitive portions of the subject site by utilizing a single crossing point to the rear of the 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

**WHEREAS**, the Commission further finds that all open space requirements of the Land Development Code are being met on the subject site; 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. Appropriate 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 District Development Plan, **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. 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:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance
  - d. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall use at least three color variations for the buildings, and shall be substantially similar to those presented at the



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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 applicant/developer/property owner shall provide all fire hydrants or other fire safety equipment as requested per the Okolona Fire Department. The final location shall be shown on the approved construction plans for the site.
7. Unless the Kentucky Transportation Cabinet allows for applicant/developer to install an all-way-stop condition at the Mud Lane-Blue Lick Road intersection (the "Intersection"), the applicant/developer and/or the property owner(s) shall provide Louisville Metro Public Works with a financial contribution for the necessary upgrade/improvement to the Intersection. The developer shall make a contribution not to exceed an amount of \$15,000.00 towards the necessary Intersection improvements, which stated contribution amount is consistent with the traffic growth associated with the Mud Lane Apartments and the proportional impact of the traffic generated by the Apartments will have on the Intersection, as identified by the Traffic Impact Study Report for 3902 Mud Lane Apartments prepared by Adam Kirk Engineering on October 7, 2022 and revised on January 9, 2023. Developer shall provide the contribution within sixty (60) days from when Louisville Metro Public Works requests it. The obligation to pay the contribution toward the improvements to the Mud Lane – Blue Lick Road intersection shall sunset ten (10) years from the date the Metro Council's takes its final action on the zone change request, under Case No. 22-ZONE-0079.

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**The vote was as follows:**

**YES: Commissioners Clare, Pennix, Mims, Cheek, Howard, Carlson, Fischer,  
Sistrunk, and Lewis.**

**ABSENT: Commissioner Brown.**