

PLANNING COMMISSION MINUTES
April 16, 2015

PUBLIC HEARING

CASE NO. 14ZONE1057

Case No: 14ZONE1057
Request: Change in Zoning from R-4 (Single Family Residential) to R-5A (Multi-Family Residential), Detailed District Development Plan and Binding Elements, Preliminary Major Subdivision Plan, and Waivers
Project Name: Ashton Park, Phase II
Location: 7504 – 7508 Beulah Church Road
Owner: Margaret D. Greenwell Revocable Trust
6507 Shaffer Lane
Louisville, Ky. 40291
Applicant: Blacketer Company
225 South Hurstbourne Parkway, Suite 103
Louisville, Ky. 40222
Representative: Bardenwerper, Talbott & Roberts, PLLC
William B. Bardenwerper
1000 North Hurstbourne Parkway, 2nd floor
Louisville, Ky. 40223
Land Design & Development, Inc.
Kevin M. Young
503 Washburn Avenue
Louisville, Ky. 40222
Jurisdiction: Louisville Metro
Council District: 23 – James Peden
Case Manager: David B. Wagner – 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

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00:35:28 Mr. Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Kevin M. Young, Land Design & Development, Inc., 503 Washburn Avenue, Louisville, Ky. 40222

Diane Zimmerman, Jacobs Engineering Group, 11940 US 42, Goshen, Ky. 40026

The following spoke in opposition of this request:

David Steff, 7812 Applevue Lane, Louisville, Ky. 40228

Summary of testimony of those in favor:

00:48:25 Mr. Bardenwerper gave a power point presentation. Notification was given to well past 2 tiers for the adjoining property owners, but there's still a limit. Also, 3 additional binding elements are being proposed.

00:57:00 Mr. Young said they need to align their entrance with Beulah Church. A public road will have to be provided to the back of the properties and that will affect the design. Also, a stop sign will be provided to address the neighbors concern about cut-through traffic. There's a 15 foot landscape buffer already in place, so a 10 foot landscape buffer is what is needed for a total of 25 feet.

01:04:27 Ms. Zimmerman prepared the traffic study and would like to clarify a point that came up at LD&T. The traffic data count at Beulah Church and Outer Loop was turned 90 degrees and the data was incorrect. The report has been modified.

Summary of testimony of those in opposition:

1:07:20 Mr. Steff is the president of the Apple Valley Property Owners' Association. He requests that Metro Council review the street closure and asks if the on-site water will be contained on site or will it go to the detention basin at the end of Apple Valley Dr.

Mr. Steff said he's glad about installing a stop sign to slow traffic down and asks Public Works not to allow semi-traffic through the streets.

Rebuttal

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01:11:25 Mr. Young stated they will not be utilizing the basin that is upstream.

Mr. Bardenwerper proposes the following three additional binding elements:

1. A 6 ft. high solid wood shadow box fence shall be provided along the north property line between the multi-family portion of the Ashton Park 2 project adjoining the Fountains Condominiums. This new fence shall tie into the existing Fountains Condominiums fence and shall be stained the same color as the existing fence.
2. The applicant shall install landscaping as shown on the proposed landscape plan presented at the April 16, 2015 public hearing.
3. The applicant shall install stub-street barriers prohibiting access to or from the Apple Valley Subdivision, which barriers shall be removed upon completion of construction of both the multi-family and single-family developments.

1:13:45 Commissioner Brown suggested replacing the proposed (by Mr. Bardenwerper) binding element 3 to read as follows: The developer shall install MUTCD compliant end-of-road barricades and signage to prohibit traffic from accessing the stub streets prior to any construction approval. The stub streets shall be open to the development upon completion of the final surface of asphalt and prior to subdivision bond.

Deliberation

01:20:50 Commissioner Jarboe said connectivity is important. Commissioner Blake said he likes that a portion will not be rezoned and will keep some mixed uses. He also agrees with Mr. Steff regarding the corner of Fegenbush, Beulah Church and Outer Loop having a heavy flow of traffic in the afternoon, but to keep working with the police and Public Works to slow the traffic down.

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 Change from R-4 to R-5A

On a motion by Commissioner White, seconded by Commissioner Turner, the following resolution was adopted.

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WHEREAS, The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and

WHEREAS, The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages and incomes. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to large lot single family developments with cul-de-sacs, neo-traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero-lot line neighborhoods with open space, and high density multi-family condominium-style or rental housing; and

WHEREAS, The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; and

WHEREAS, Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets; and

WHEREAS, Compliance with **Guideline 1 (Community Form)**, **Guideline 2 (Centers)** and **Guideline 3 (Compatibility)** has been found for this proposal. The site is surrounded on all sides by single and multi-family residential uses. The multi-family residential portion of the development is located along a major arterial level roadway to encourage traffic to exit the development onto the main thoroughfare and locates the single family residential area along the west end of the site at the rear, adjoining the other single family residential uses. The required Parkway Buffer and Setback are provided along Beulah Church Road and the site contains the required landscape buffers to help mitigate potential nuisances to adjoining property owners. The site has excellent cross-connectivity with the subdivisions to the north and west and will provide a stub street connection to the south for when or if the adjoining property is re-developed. This site provides another vital means of access in the area as the

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subdivisions to the west do not have a means to access Beulah Church Road without having to drive out of their way to the north and Outer Loop or to the south and Manslick Road. A detention basin will be provided on site to help mitigate drainage concerns in the area and required sidewalks will be created along the entire street network within and abutting the development. Height restrictions and setbacks will be provided on the site to help with compatibility and the applicant has provided elevations of the proposed multi-family residential buildings to ensure compatibility with similar developments in the area; and

WHEREAS, The proposal complies with **Guideline 4 (Open Space)** as adequate open space has been provided for this development. Multi-family residential developments in the area can be found with similarly designed open space as is provided within this development. It will be maintained by deed restrictions to be recorded upon recording the record plat for the development; and

WHEREAS, There are no natural areas or habitats to integrate on this site nor are there any historic landmarks. Therefore, the proposal complies with **Guideline 5 (Natural Areas and Scenic and Historic Resources)**; and

WHEREAS, the Louisville Metro Planning Commission finds, compliance with **Guideline 7 (Circulation), Guideline 8 (Transportation Facility Design), and Guideline 9 (Bicycle, Pedestrian and Transit)** has been found for this proposal. The development will greatly increase the connectivity in the area by providing a means to access Beulah Church Road by the subdivisions to the north and west of the site. Sidewalks are provided throughout the site and right-of-way is being dedicated to allow for future road improvements that may be necessary in the future. A stub street has been shown to connect to potential residential development in the future along the south property line. All comments from Transportation Review and KTC have been addressed and Transportation Review has given their preliminary approval of the plan; and

WHEREAS, the Louisville Metro Planning Commission further finds information provided by the applicant has shown there is compliance with **Guideline 10 (Flooding and Stormwater), Guideline 12 (Air Quality), and Guideline 14 (Infrastructure)** as the Air Pollution Control District has approved the proposal and no other utility has any issues. Existing utility infrastructure will be maintained for the development and MSD has given preliminary approval of the plan.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of the zoning change from R-4 to R-5A, Case No. 14ZONE1057, based on the staff report, applicant's justification and the testimony heard today.

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The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes, Turner and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer and Proffitt

ABSTAINING: No one

On a motion by Commissioner White, seconded by Commissioner Turner, the following resolution was adopted.

Waiver #1 for Tract 1 from LDC 10.2 to waive the required 25' LBA, plantings and screening along the Fountains Condo Council property line

WHEREAS, The waiver will not adversely affect adjacent property owners because the development is adjacent to a 15' LBA already provided by the Fountains Condo Council and an existing detention basin which creates a substantial distance from the actual building in the two developments; and

WHEREAS, The waiver will not violate specific guidelines of Cornerstone 2020 for the reasons stated above in the re-zoning comprehensive plan review; and

WHEREAS, the Louisville Metro Planning Commission finds, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because LBA already exists on adjoining property and this space is needed for a 15' Sanitary, Sewer, and Drainage Easement to serve the proposed development; and

WHEREAS, the Louisville Metro Planning Commission further finds The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because some landscaping is already provided by the adjoining property owner and the applicant would have to add unnecessary landscaping.

Waiver #2 for Tract 2 from LDC 10.2 to reduce the required 25' LBA along the Fountain Fountains Condo Council property line to a 10' LBA and allow encroachments into the 10' LBA

WHEREAS, The waiver will not adversely affect adjacent property owners because the total required 25' LBA would be provided with the combined landscaping on both properties; and

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WHEREAS, The waiver will not violate specific guidelines of Cornerstone 2020 for the reasons stated above in the re-zoning comprehensive plan review; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because the waiver will allow the applicant to add additional landscaping to provide the total required instead of more landscaping than what is typically required; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the total landscaping would be 15' wider than what is normally required.

Waiver #3 for Tract 2 from LDC 10.2 to reduce the required 8' screen along the Fountains Condo Council property line to a 6' screen

WHEREAS, The waiver will not adversely affect adjacent property owners because the applicant will provide the same 6' high fence that the adjoining property owner partially installed; and

WHEREAS, The waiver will not violate specific guidelines of Cornerstone 2020 for the reasons stated above in the re-zoning comprehensive plan review; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because it will allow the applicant to provide the same screening that was provided by the adjoining property owner.

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the existing fence is only 6' tall instead of the code required 8'.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waivers 1, 2 and 3 for Case No. 14ZONE1057 based on the staff report, testimony today and the applicant's justification.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes, Turner and White
NO: No one

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NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer and Proffitt

ABSTAINING: No one

Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, The site will not preserve tree canopy but it will add a substantial amount of tree canopy through the planting of additional trees; and

WHEREAS, The development will greatly increase the connectivity in the area by providing a means to access Beulah Church Road by the subdivisions to the north and west of the site. Sidewalks are provided throughout the site and right-of-way is being dedicated to allow for future road improvements that may be necessary in the future. A stub street has been shown to connect to potential residential development in the future along the south property line. All comments from Transportation Review and KTC have been addressed and Transportation Review has given their preliminary approval of the plan; and

WHEREAS, Adequate open space has been provided for this development. Multi-family residential developments in the area can be found with similarly designed open space as is provided within this development. It will be maintained by deed restrictions to be recorded upon recording the record plat for the development; and

WHEREAS, MSD has approved the drainage facilities for the site; and

WHEREAS, the Louisville Metro Planning Commission finds, the site is surrounded on all sides by single and multi-family residential uses. The multi-family residential portion of the development is located along a major arterial level roadway to encourage traffic to exit the development onto the main thoroughfare and locates the single family residential area along the west end of the site at the rear, adjoining the other single family residential uses. The required Parkway Buffer and Setback are provided along Beulah Church Road and the site contains the required landscape buffers to help mitigate potential nuisances to adjoining property owners. The site has excellent cross-connectivity with the subdivisions to the north and west and will provide a stub street connection to the south for when or if the adjoining property is re-developed. This site provides another vital means of access in the area as the subdivisions to the west do not have a means to access Beulah Church Road without having to drive out of their way to the north and Outer Loop or to the south and Manslick Road. Height restrictions and setbacks will be provided on the site to help with compatibility and the applicant has

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provided elevations of the proposed multi-family residential buildings to ensure compatibility with similar developments in the area; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan, binding elements on pages 11 and 12 of the staff report and the 2 additional binding elements #1 and #2 as proposed by the applicant based on the staff report, testimony heard today and the applicant's justification **SUBJECT** to the following Binding Elements:

Proposed Binding Elements for Re-Zoning Multi-Family Residential (Tract 2)

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 Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to

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- requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
- d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
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. 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 filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
- b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.
- c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
7. 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 homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.

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8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the _____ Planning Commission meeting.
9. A 6 ft. high solid wood shadow box fence shall be provided along the north property line between the multi-family portion of the Ashton Park 2 project adjoining the Fountains Condominiums. This new fence shall tie into the existing Fountains Condominiums fence and shall be stained the same color as the existing fence.
10. The applicant shall install landscaping as shown on the proposed landscape plan presented at the April 16, 2015 public hearing.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes, Turner and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer and Proffitt

ABSTAINING: No one

Preliminary Major Subdivision Plan

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Preliminary Major Subdivision Plan and Conditions of Approval found on pages 12 and 13 of the staff report with an additional Condition of Approval (proposed by Bill Bardenwerper and edited by Commissioner Brown) to read as follows: The developer shall install MUTCD compliant end-of-road barricades and signage to prohibit traffic from accessing the stub streets prior to any construction approval. The stub streets shall be open to the development upon completion of the final asphalt surface and prior to subdivision bond; based on the staff report, testimony heard today and the applicant's information.

Proposed Conditions of Approval for Single Family Residential (Tract 1)

1. 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.

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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 Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - 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 major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
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 conditions 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 conditions to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these conditions. These conditions 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 conditions. 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 conditions.

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6. 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 filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
7. 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 homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
8. The developer shall install MUTCD compliant end-of-road barricades and signage to prohibit traffic from accessing the stub streets prior to any construction approval. The stub streets shall be open to the development upon completion of the final asphalt surface and prior to subdivision bond.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes, Turner and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer and Proffitt

ABSTAINING: No one