

DRC MINUTES
October 26, 2011

NEW CASES:
CASE NO. 16306

Case: 16306
Project Name: Atteberry Park
Location: 5619 McDeane Road
Owner(s): Republic Bank and Trust Co.
Applicant: Republic Bank and Trust Co.
Representative: Land Design and Development, Inc. and Bardenwerper
Talbot and Roberts, PLLC
Project Size/Area: 30.8 Acres
Jurisdiction: Louisville Metro
Council District: 12-Rick Blackwell
Case Manager: Julia Williams, Planner II

An audio/visual recording of the Development Review Committee related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this meeting will be found on the cd of the October 26, 2011 proceedings.

SUMMARY OF STAFF PRESENTATION:

1:14:47 The applicant requests a Revised Detailed District Development plan, a subdivision plan for 5 lots and dedication of right of way.

The applicant is proposing to 198 multi-family residential units on 29.1 acres and 5 single family residential lots on 1.7 acres. No variances or waivers are needed for this request. The proposed layout eliminates the need for LBA waiver along the west property line adjacent to a railroad easement that was approved along with the change in zoning (9-23-04).

The following spoke in favor of this request:

Bill Bardenwerper, 8311 Shelbyville Road, Louisville, Ky. 40222
Kevin Young, 503 Washburn Avenue, Louisville, Ky.
Mark Lehr, 661 South Hurstbourne Parkway, Louisville, Ky. 40222

The following spoke in opposition:

No one

The following spoke as "interested parties"

George Fulner, 5617 Brunz Drive, Louisville, Ky.

SUMMARY OF TESTIMONY OF PROPONENTS:

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1:17:43 Mr. Bardenwerper said the bank inherited the property because the previous owners were unable to move forward with their plans. The proposal is for additional lots and more units but fewer buildings. The area has very steep slopes. There are no calculations for open space on the plan but there is probably more open space than originally planned.

1:22:09 Mr. Young explained the proposal/plan. "It's a fairly standard layout for apartment buildings but it's also pretty unique because we have over 11 acres of open space on this site. Also, we do have some wetlands that will be mitigated through the Core of Engineers."

1:24:22 Mr. Bardenwerper remarked, "We do have it under 200 units (198). At one point we had more units because we had more land but because of some of the slopes, lakes and an issue with the 200 unit rule we decided 198 is better than what we have today which is a piece of ground that we can't sell or develop."

1:24:47 Commissioner Jarboe asked if there was more than one way into the development. Mr. Bardenwerper said it's the only entrance/exit. Commissioner Jarboe asked about the increased traffic for the development. Mr. Young answered, "We did a trip generation study and of course there will be an increase in trips because we have more units but that is equivalent to 1 car a minute during the rush hour." Ms. Caummisar added, "The counts done at Lyndon and McDeane – a.m. coming out are 36 and 15 - p.m. there's 34 and 8, additional of 14 and 24 for the p.m. – the total build would be 26, 46 for the p.m. - 5 and 13 – the a.m. would be 87, 13 and 13, 29."

SUMMARY OF TESTIMONY OF OPPONENTS:

None

SUMMARY OF TESTIMONY OF INTERESTED PARTY:

1:26:56 Mr. Fulner said the hillside is at a 45 degree angle and there has been some sliding – it's made of clay and will not compact. Mr. Young said he wants to stay off the hillside. The applicant/representatives have agreed (binding element) to do a foundation and operate using the Geotechnical engineer recommendations.

Mr. Fulner said he's concerned about traffic build up on Gagel. Also, from 2-5 p.m. there's a backup to the railroad tracks about a mile long. The lights are not synchronized. He is also concerned for the children in the area. Mr. Lehr said they're further from the slope now than they were when the plan was previously approved.

DISCUSSION:

1:38:05 Ms. Williams stated, "The extra sheet I passed out reflects the binding element. I had to make some changes. The new language is in bold. I had to change

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the buildings so if this moves forward, you want to take that binding element into account.”

ACTION

1:40:00 Commissioner Tomes moved to **APPROVE** the subdivision plan for 5 lots and the dedication of right-of-way per the testimony heard today and the staff report. Commissioner Jarboe seconded the motion. Unanimously approved.

The vote was as follows:

YES: Commissioners Jarboe, Proffitt and Tomes

NO: No one

NOT PRESENT: Commissioner Wahl

ABSTAINING: No one

1:40:44 Commissioner Tomes moved to **APPROVE** the Revised Detailed District Development Plan and the revisions to the binding elements (including revisions to 13 D and E) included in the staff report based on the staff report, the review and analysis on pages 13 and 14 and the testimony heard today. Commissioner Jarboe seconded the motion. Unanimously approved.

WHEREAS, 25% of the site will be preserved in tree canopy with much of that area being the area of steep slopes as well. Portions of the site are in wetlands which are being relocated into a “wetland enhancement area” or are being filled in. The major wetland area will be constructed into a pond; and

WHEREAS, sidewalks and a mulch walking trail are proposed on the site. Vehicles are provided for by way of a roadway system that connects to a proposed roadway; and

WHEREAS, the site is providing 38% open space which is more than the 15% required by the Land Development Code; and

WHEREAS, the proposed pond will act as the detention area for the site; and

WHEREAS, the site is surrounded by either vacant or single family uses but there is existing R-6 zoning in the area which permits a higher density multi-family residential; and

WHEREAS, the site meets the Comprehensive Plan guidelines and LDC requirements as the proposal is for both multi-family and single family residential as was proposed under the original rezoning however, the current proposal is for higher density as permitted within R-5A.

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RESOLVED, that the Development Review Committee does hereby **APPROVE** the RDDDP for Case No. 16306, subject to the following binding elements:

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 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. The density of the development shall not exceed 6.8 dwelling units per acre (198 units on 29.1 acres) on Tract 1, and 5.6 (net) dwelling units per acre (5 lots on 1.7 acres) on Tract 2.
4. 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition is requested:
 - a. The development plan must receive full construction approval from 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 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.
 - 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.

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6. 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.

7. 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.

8. The applicant shall provide deeds of restriction ensuring that Tree Canopy Preservation Areas (TCPAs) will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval (except for single family subdivisions). All plans setting out TCPAs must contain the following notes:
 - a. TCPAs identified on this plan represent portions of the site on which all trees greater than 2" in caliper shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated TCPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. As trees are lost thru natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan.
 - b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent the minimum boundary of the designated TCPAs. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

9. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.

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- 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 TCPAs, 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.
10. 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 \$1,000 cash in the association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 26, 2011 Development Review Committee meeting.
12. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
13. Land disturbing activity on steep slopes greater than 20% and unstable soils is permitted only in accordance with the Comprehensive Plan and in keeping with the Geotechnical Report of MACTEC dated July 26, 2004, as submitted at the August 5, 2004 public hearing and in accordance with the following:
- a. The Planning Commission determines the proposed construction cannot be accommodated on a portion of the site that does not contain steep slopes and unstable soils; and,
 - b. The application for the land disturbing activity shall include a geotechnical survey report, prepared in accordance with best practices. Such survey will ordinarily include information obtained by drilling, locating of bedrock and testing of soils for shear strength. The report shall be prepared by a licensed and Kentucky-registered professional engineer practicing in accordance with KRS 322 and whose area of expertise includes geotechnical engineering. In order for the proposed construction to be approved, the report must:
 - i. conclude the proposed disturbance and/or construction can be carried out in a manner that will not adversely impact the slope or foundation stability on the subject property and surrounding properties; and,

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- ii. conclude that stable foundations can be constructed on the site and identify the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site; and,
 - iii. include erosion and sediment control measures necessary to assure compliance with the Jefferson County Erosion and Sediment Control Ordinance; and,
 - c. The applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.
 - d. Prior to requesting a full building permit for condominium buildings 1-4, in keeping with the geotech report presented at the August 5, 2004 public hearing, the applicant shall provide certification from a professional engineer having the qualifications described in paragraph 2, above, that site preparation and foundation construction were carried out in accordance with the approved mitigation measures and construction practices.
 - e. Prior to requesting a certificate of occupancy for condominium buildings 1-4, in keeping with the geotech report presented at the August 5, 2004 public hearing, the applicant shall provide certification from a geotechnical soils engineer certifying that land disturbance and construction were carried out in accordance with the mitigation measures and construction practices, including inspections, set forth in the geotechnical report.
 - f. Prior to site disturbance, the applicant shall submit a bond of sufficient amount to cover the cost of site stabilization.
- 14. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan. All plans setting out tree preservation areas must contain the following notes:
 - a. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Tree in these areas may be removed during construction of homes or buildings on individual lots.
 - b. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer,

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- or property owner to include canopy area of all trees at or within the dimension line.
- c. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
 - d. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
 - e. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.
15. Developer shall consult with the company that owns the pipeline running through the subject property and satisfy any reasonable requirements of the pipeline company.
16. Prior to requesting a Certificate of Occupancy, a walking trail shall be installed on the subject property approximately around the east side of the lake and tie into the sidewalks on the west side of the lake.

The vote was as follows:

YES: Commissioners Jarboe, Proffitt and Tomes

NO: No one

NOT PRESENT: Commissioner Wahl

ABSTAINING: No one