

PLANNING COMMISSION MINUTES
January 10, 2019

PUBLIC HEARING

CASE NO. 18ZONE1068

Request: Change in zoning from R-4 and OR-2 to PRD and OR-2 with variances, a waiver and a Detailed District Development Plan

Project Name: 4229 Taylorsville Road
Location: 4229 Taylorsville Road
Owner: 4229 SMS LLC
Applicant: 4229 SMS LLC
Representative: Mindel Scott and Associates; Bardenwerper Talbott and Roberts PLLC

Jurisdiction: Louisville Metro
Council District: 18- Marilyn Parker
Case Manager: Julia Williams, AICP, Planning Supervisor

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:00:13 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report. Also, there were some changes, so the commissioners will need to refer to the presentation instead of some portions of the staff report. The variance from chapter 5.3.1.D.1.b.v to allow for the rear yards of lots 17-24 to be no less than 15 feet as shown on the development plan is being eliminated (not needed).

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2nd floor, Louisville, Ky. 40223
Steve Scott, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

Summary of testimony of those in favor:

01:10:18 Mr. Talbott gave a power point presentation. The proposal will be low intensity, the height will be 1-story and will fit the character of the neighborhood. Deed restrictions were used as binding elements a long time ago. The home will be moved to

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the front of the property. The lots have no uniformity. There is no need for encroachment in the front yard, the landscaping plan has been upgraded and the 6 foot privacy fence will remain.

01:33:58 Commissioner Howard asked if shrubbery would be added to the Taylorsville Rd. frontage. Mr. Talbott said there's a landscaping plan, so probably a little. Also, will there be a sign for the building? Mr. Scott said the center island sign will probably be a combined sign.

01:36:33 Commissioner Daniels asked where the visitor parking would be located. Mr. Talbott said there will be garages. Mr. Scott added there's 2 spaces at the end of each drive. Also, will there be any sidewalks? Mr. Scott said yes, every unit will have a sidewalk leading to Taylorsville Rd.

01:37:42 Chair Jarboe asked if Planning and Design agrees with removing the binding element for the deed restrictions. Ms. Williams said it's not really a binding element, but a "whereas" statement that fiscal court placed on the property and the property is not planned certain, but pre-planned certain. Mr. Whitty said there's no harm in recommending the removal to Metro Council.

The following spoke neither for nor against the request:

Scott Floore, 1816 Ashfield Lane, Louisville, Ky. 40220

Summary of testimony of those neither for nor against:

01:40:29 Mr. Floore, Homeowner Association President, stated the applicant/representatives heard and addressed their concerns and should be good neighbors. There is however a concern regarding the landscaping plan presented today – quantity, spacing and maturity of the trees.

Rebuttal

01:43:55 Mr. Talbott stated there are no trees now but some will be added. Putting in bigger trees, as requested by Mr. Floore and Commissioner Carlson, will be more expensive, have slow growth rate and may not survive.

Mr. Talbott requests that the Planning Commission recommend approval based on the finding of facts under the Comprehensive Plan 2040.

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01:47:34 Chair Jarboe asked if Cornerstone 2020 or 2040 should be used in the motion. Ms. Williams answered, Cornerstone 2020. Ms. Williams added, binding element 9 refers to the existing house on lot 39 and is now lot 35.

01:49:41 Mr. Talbott said if the hearing is in this year, the findings should be based on the 2040 Comprehensive Plan. Chair Jarboe said it's based on the date filed for an application.

01:50:40 Commissioner Brown asked if a binding element should be added regarding timing of the planting (evergreens). Mr. Scott said they can do it as quickly as practical but will want the pavement and grading done first.

Commissioner Brown also asked for a binding element for the upgraded or enhanced landscaping as well. Mr. Talbott agreed.

Deliberation

01:55:34 Planning Commission 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 Change from R-4 and OR-2 to PRD and R-4 to OR-2

On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution based on the Cornerstone 2020 Staff Analysis, testimony heard today and proposed finding of fact was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the change in zoning is not located in a center nor does it create a new center. The proposal is for OR-2 which permits a mix of office and residential uses at a scale that is appropriate for neighborhoods. A third of the property is currently zoned OR-2 and the proposal will reduce that area. Most of the property is proposed to be rezoned to a low density zoning district. The proposal is not a high intensity zoning district but is located on a major arterial. The proposal is located in an area with limited impact on the low density single family residential uses located adjacent to the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal does not create a new center in the NFD.

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The proposal is for the reuse of an existing structure for an office use and the rest of the site to be used for single family. The proposal is compact and is located in an area where it creates an efficient land use pattern because there is other more intense office zoning on site and in the vicinity. The proposal is cost effective for infrastructure because it is low intensity and will utilize the existing Taylorsville Road infrastructure. The proposal is for a mix of compatible uses (office and residential) that could reduce trips. Transit is available along Taylorsville. Sidewalks will be provided. There are bike lanes along Taylorsville Road. The proposal is for new single family residential structures and the re-use of an existing home for an office use. Connections or stubs to adjacent properties are not provided as there are no vacant lots adjacent to the site. The applicant is allowing for shared access between the OR-2 and PRD lots. Utility easements are provided and would allow for extensions to adjacent developments. The site does encourage pedestrian access and future sidewalk connectivity with proposed sidewalks in and around the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the building materials for the single family homes are similar to the building materials found in the area. The proposal is a not a non-residential expansion into a low density single family residential area. APCD has no issues with the proposal. Transportation Planning has not indicated that the proposal will have adverse impacts on traffic. Light trespass requirements of the Land Development Code will adequately mitigate adverse impacts of lighting. The proposal reduces and reconfigures the existing OR-2 zoning. Setback variances and landscape waivers are requested internal to the site and will not affect the adjacent existing residential. Setback variances and landscape waivers are requested internal to the site and will not affect the adjacent existing residential. Parking is not located directly adjacent to existing single family adjacent to the subject site or directly adjacent to a roadway. Signs will be LDC compliant; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because the proposal sets aside open space lots that meet open space standards for the PRD zone; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because staff of Historic Preservation has reviewed the preliminary development plan and found that the proposed zoning change will not affect any known cultural or historic resources. The existing home is being preserved and is eligible for National Register. LOJIC did not identify any wetlands on site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because Transportation Planning is not requiring any roadway

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improvements with the proposal. Sidewalks will be provided within the ROW. Sidewalks will be provided along the sites frontage and within the site. A bike lane exists along Taylorsville Road. The adjacent properties are single family residential and the proposal does not indicate connections to these low density sites. No ROW dedication will be required. Adequate parking will be provided. Cross access between the single family and office zoning is provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because stub streets are not required. Access to the site is from a major arterial. No new roadways are proposed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because sidewalks will be provided along the sites frontage and within the site. A bike lane exists along Taylorsville Road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because MSD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because APCD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because an existing natural corridor is not evident in or around the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because existing utilities serve the site. Adequate water is available to the site. The Health Department has no issues with the proposal.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential and OR-2, Office Residential to PRD, Planned Residential District and R-4, Single Family Residential to OR-2, Office Residential and release the insurance office deed restriction under Docket No. 9875 because the change in zoning to OR-2, Office Residential is official for any office.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Robinson

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Variance from Chapter 5.3.1.D.1.c.iii to allow for pavement and parking to encroach into the 15' front yard.

On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the front yards for the proposal are all internal to the site and do not affect the aesthetics of the adjacent properties; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity because the front yards for the proposal are all internal to the site and do not affect the aesthetics of the adjacent properties; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public because the front yards for the proposal are all internal to the site and do not affect the aesthetics of the adjacent properties; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations because the front yards for the proposal are all internal to the site and do not affect the aesthetics of the adjacent properties; and

WHEREAS, the requested variance does arise from special circumstances since the proposal is requesting a mix of housing options, patio style 4-plex single family and attached row house 4-plex single family, where the parking and driveways for the lots are oriented differently than standard single family; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the front yards for the proposal are all internal to the site where the site could not achieve the density and would require a less compact development; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Waiver from Chapter 10.2.4 to eliminate the 20' LBA and planting requirements where the OR-2 zoning is adjacent to the PRD zoning

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WHEREAS, the waiver will not adversely affect adjacent property owners since the buffer is internal to the site and is due to the applicant wanting to preserve the existing National Register eligible building; and

WHEREAS, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The proposal meets the comprehensive plan since the buffer is internal to the site and is due to the applicant wanting to preserve the existing National Register eligible building; 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 since the buffer is internal to the site and is due to the applicant wanting to preserve the existing National Register eligible building; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the buffer is internal to the site and is due to the applicant wanting to preserve the existing National Register eligible building

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance from chapter 5.3.1.D.1.c.iii to allow for pavement and parking to encroach into the 15 foot front yard and a waiver from chapter 10.2.4 to eliminate the 20 foot

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landscape buffer area and planting requirements where the OR-2 zoning is adjacent to the PRD, Planned Residential District zoning.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Robinson

Detailed District Development plan/Subdivision plan

On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution based on the Standard of Review and Staff Analysis, testimony heard today and evidence provided was adopted.

WHEREAS, there do not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. The existing house on the site is eligible for National Register and will be preserved on the site in a new location; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, open space requirements will be met on the site; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent roadways. Buildings generally meet all required setbacks; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and Subdivision 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. 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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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 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. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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.

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- e. A blanket crossover/shared access easement agreement in a form acceptable to the Planning Commission legal counsel shall be created and recorded in the deed restrictions for the site or recorded prior to certificate of occupancy.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 10, 2019 Planning Commission meeting.
 9. The existing house on Lot 35 shall not be demolished. Future exterior renovations of the existing residence shall be reviewed in consultation with the staff of the Metro Landmark Commission.
 10. 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."
 11. 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.

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12. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
13. 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.
14. 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 treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
15. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
16. At the time the developer turns control of the homeowners 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 Brown, Carlson, Daniels, Howard, Lewis, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Robinson