

**Planning Commission Minutes
July 20, 2017**

Public Hearing

Case No.16ZONE1084

Request: Change in zoning from R-6 to R-7, a Detailed District Development Plan, and a Variance
Project Name: 1073 Mary Street Condos
Location: 1073 Mary Street
Owners: Alma and Milenko Simic
Applicants: Alma and Milenko Simic
Representative: Accurus Engineering
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith

Case Manager: **Joel Dock, 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.)

An audio/visual recording of the Planning Commission public 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.

Agency Testimony:

00:39:53 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Jennifer Caummisar-Kern, Accurus Engineering, 2780 Jefferson Center Way, Suite 204, Jeffersonville, IN 47130

Alma Simic, 9915 Constantine Circle, Prospect, KY 40059

Summary of testimony of those in favor of the request:

00:47:16 Jennifer Caummisar-Kern, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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00:54:50 In response to a question from Commissioner Carlson, Ms. Caummisar-Kern said the new buildings will use siding. She said this is a common material used on other homes in the neighborhood.

00:55:53 In response to a question from Commissioner Carlson, Ms. Caummisar-Kern said there would be a maintenance agreement, so residents would not have to cut their own lawns. Alma Simic, one of the applicants, further explained the configuration of the lots and how they relate to backyard access.

00:58:14 Commissioner Lindsey said she visited the site, and had trouble maneuvering her small vehicle in the alley. How will this be resolved? Ms. Caummisar-Kern and Ms. Simic explained the plan for entering and exiting the proposed garages.

01:01:18 Commissioner Lindsey also asked what necessitates having five units on this lot, versus three, which would fit in with the existing zoning. Ms. Simic said it is a double lot, and explained in detail about design issues.

01:06:18 Commissioner Tomes and Ms. Simic discussed the gable and the porch depth, and how it would affect the appearance on Mary Street.

The following spoke in opposition to the request:

No one spoke.

The following spoke neither for nor against:

No one spoke.

Rebuttal:

There was no rebuttal, since no one spoke in opposition.

Deliberation:

01:10:16 Commissioners' deliberation.

Zoning

01:16:23 On a motion by Commissioner Carlson, seconded by Commissioner Lindsey, the following resolution was adopted:

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WHEREAS, the Commission finds that, based on the staff report, the applicant's findings of fact, and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 and the Land Development Code are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-6 to R-7 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Ferguson, Tomes, Carlson, and Jarboe.

NO: Commissioner Lindsey.

NOT PRESENT: Commissioners Lewis, Smith, Peterson, and Howard.

ABSTAINING: No one.

Variance and Detailed District Development Plan

01:16:47 On a motion by Commissioner Carlson, seconded by Commissioner Lindsey, the following resolution was adopted:

(Variance) WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare as the variance does not impact the safe movement of pedestrians or vehicular traffic and concerns related to fire safety access for the increased bulk along the alley have been addressed; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as appropriate transitions are present between the area of the variance and adjacent residential property. Transitions include private green space along the eastern property line, a 15' alley and walk along the western boundary, and a 10' alley at the North of the subject site. The structure is compatible in both design and material to the immediately surrounding area and respects the traditional pattern of the neighborhood; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the variance does not impact the safe movement of pedestrians or vehicular traffic and concerns related to fire

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safety access for the increased bulk along the alley have been addressed. The bulk of the structure is mitigated by the selected materials and design as presented on the renderings of the building. The four units that do not face Mary Street have been designed using the alley side as the front facade which enhances the appearance facing residential properties; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance allows for the use of the entirety of the site in an infill context and provides increased density in an appropriately located urban area; and

WHEREAS, the Commission further finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the multi-family development has been designed to utilize the alley as primary access to dwelling entrances (front) and the opposite side as the rear yard. Each unit has been provided with private access to over four hundred square feet of green space; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the applicant has designed the structure to be compatible and consistent with the surrounding area to the greatest extent possible while creating new housing at an increased density, utilizes this infill lot, and maintaining appropriate transitions; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

(Development Plan) WHEREAS, the Commission further finds that there are no apparent natural systems or environmental degradation caused as a result of this development. The property does not appear to exhibit any historical significance; 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. Sidewalks and a TARC stop are present on Mary Street. Vehicular access is provided from the alley; and

WHEREAS, the Commission further finds that sufficient open space to meet the needs of the development has been provided for each dwelling along the Eastern side of the property. Each unit is provided over four hundred square feet of

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private green space. Balconies have also been proposed to open the units to the outdoors and enhance the appearance of the structure; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 Commission further finds that the design (materials and style) and orientation (first unit towards the public street) is consistent with the character of the area and abutting homes. Traditionally homes would have been brick or clapboard siding in the area. A combination of materials has been used that are compatible to surrounding property and mimic traditional design. The design of the front façade and public realm respects the pattern and character of the area; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as demonstrated in the *Cornerstone 2020 Staff Checklist* for the change in zoning request; and

WHEREAS, the Commission further finds that, based on the staff report and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 and the Land Development Code are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Variance** from Land Development Code (LDC), section 5.4.1.D to eliminate the private yard area **AND** the requested Detailed District Development Plan, **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 designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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3. 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.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, 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.
5. 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.
6. 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.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 20, 2017 Planning Commission meeting.

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8. The Owner / Developer will maintain the transit stop on an as needed basis.

The vote was as follows:

YES: Commissioners Brown, Ferguson, Tomes, Carlson, and Jarboe.

NO: Commissioner Lindsey.

NOT PRESENT: Commissioners Lewis, Smith, Peterson, and Howard.

ABSTAINING: No one.