

# Land Development and Transportation Committee

## Staff Report

May 25, 2017



<b>Case No:</b>	<b>16zone1074</b>
<b>Request:</b>	<b>Change in zoning from R-4 and PRD to R-6 with a Variance and a District Development Plan</b>
<b>Project Name:</b>	<b>Avoca Road Apartments</b>
<b>Location:</b>	<b>12201 and 12207 Avoca Road</b>
<b>Owner:</b>	<b>Fetter Properties LLC.; Joseph and Karoll Foreman</b>
<b>Applicant:</b>	<b>LDG Development</b>
<b>Representative:</b>	<b>Mindel Scott and Assoc.; Dinsmore and Shohl</b>
<b>Jurisdiction:</b>	<b>Louisville Metro</b>
<b>Council District:</b>	<b>19-Julie Denton</b>
<b>Case Manager:</b>	<b>Julia Williams, RLA, AICP, Planning Supervisor</b>

### REQUEST

- Change in zoning from R-4 and PRD to R-6
- Variance from Chapter 5.3.1.C to allow a 38' building height instead of the required 35' (3' variance)
- District Development plan

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The proposal is for 408 apartment units on 28.46 acres of land. 83% of the site is in existing tree canopy with 7% proposed to remain. The site is located adjacent to Berrytown Park to the west and an existing industrial activity center to the east.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Vacant/Single Family Residential	PRD/R-4	N
<b>Proposed</b>	Multi-Family Residential	R-6	N
<b>Surrounding Properties</b>			
<b>North</b>	Single and Multi-Family Residential	R-4/R-5A,	N
<b>South</b>	Railroad/Single Family Residential	R-4	N
<b>East</b>	Fire Station/Industrial	R-4/M-2	N/SW
<b>West</b>	Park	R-4	N

### PREVIOUS CASES ON SITE

- 14extension1001- Extension of expiration date, approved March 2014
- 13848- R-5A to PRD approved July 2010

### INTERESTED PARTY COMMENTS

1. We attended the meeting of LDG Multifamily, LLC to discuss the development they are planning for 12201 and 12207 Avoca Road properties, on Monday, December 19, 2016. We have several concerns that we want on record. We do not feel that notes or recording of concerns, of those in attendance, were recorded.

We have three major concerns about the 408 unit apartment complex that they are wanting to be developed at the above Avoca Road address.

1. The exercising of the Easement across the north end of our property next to our building at 1314 N. English Station Road is our first concern. That easement was acquired from the previous owner of the property. When he built the two north buildings 1304 and 1310 N. English Station Road, the location of the buildings made that easement for the road very narrow. There is a mandatory green space between the Middletown Fire Department Training Center and our north buildings which makes the easement for the road within several feet of the building's north wall. This means any person walking out of the walk through doors or using the overhead doors will be struck by a vehicle driving through the easement. Our entranceway for the our parking lot, which will become a road if the easement is used is very steep and has a strange curve before the exit/entrance onto North English Station Road. On the west side of the easement, at our west property line, going onto the project property, there is a creek in a deep gully which is about 40 feet below the ground level, which will make it necessary to build a bridge or some sort of elevation to get across the creek through that easement. That is going to be very expensive to build. With 408 apartment units, assuming that each apartment has two vehicles, there will be the possible traffic flow of 816 vehicles, or more over that road, the easement, several times a day. We think the best entrance/exit for the apartments would be better placed on Heafer Road, where there is no creek to cross or buildings other than their own apartment buildings.
2. Our second concern is Avoca Road. Avoca Road is currently closed where it crosses the railroad tracks just west of North English Station Road and only serves one residence at this time and they have offered to buy that property. As the first property owner along Avoca we are going to be required to widen Avoca Road and build a sidewalk across our property, which will necessitate a large amount of fill along Avoca which is the south end of our Parker Hollow LLC property. More than anything with the Jefferson County concern about the tree canopy, we will have to remove a large number of old growth trees in order to widen the road. With the current plan for the apartment development, they will turn into the approximate driveway from the only house on Avoca Road, which they are purchasing. The road continues a long distance past that driveway to the west to the road closure. Avoca road going west becomes very narrow and is impossible for a semi, a large truck or even an SUV to turn around where the road is dead end. The road closed sign is very far into the Avoca entrance so vehicles are already committed to needing to turn around upon entering the road. Many need to back out of the road onto N. English Station Road and North English Station road is heavily traveled with vehicles. The solution to this would be to make a cul-de-sac west of the apartment entrance on Avoca Road and the remainder of Avoca torn up and removed. To widen Avoca Road on the railroad side would eliminate the need to remove a great many old growth trees and eliminate the need for excessive fill on the north side of Avoca Road. My concern is that we are going to have to pay for the Avoca road widening and sidewalk for a project that we have nothing to do with and is going to increase the vehicle and foot traffic on all sides of our property. We are opposed to paying to widen Avoca Road and installing a side walk for their project through no fault of our own.
3. With 408 apartments planned for their project and the lengthy joint west property line we are concerned that there could be as many as 1000 to 1200 plus people living in this project that a short

cut to English Station Road or Old Henry Road would be across our property and through our commercial buildings and parking lots creating traffic and security issues for our tenants . We would like to require a fence built along our common property line from the north end to the south end at their expense. A large portion of this property line is already fenced by us. We are concerned about the vehicle traffic through a possible entrance/exit road across the easement at the north end of our property, will make our building virtually impossible to rent and an extreme safety hazard by the apartment complex using that easement. Currently our building is fully leased by an electrical contractor/HVAC company with van trucks entering and exiting the building on the north end to restock their trucks, and also an exercise/baseball practice facility with many children and families coming and going seven days a week. Our requirement to pay to widen Avoca Road as a result of no change of the usage of our property is extremely expensive for no benefit to us. This whole apartment project appears to be going to inflict a great financial burden on Parker Hollow LLC.

Parker Hollow LLC  
Jane E Dobbins, Owner  
Innes W. Dobbins III, Owner  
PO Box 230  
Scottsburg, IN 47170

2. One thing we didn't mention is that we are very concerned this might be low income housing or government subsidized housing, and that is a big concern for us as we think it will reduce our property values and the ability to rent/lease our office warehouse buildings which are right alongside the project property.

Thanks, Janie Dobbins for Parker Hollow LLC

3. The adjacent property owner (Parker Hollow) has a concern about the access road and the distance of the access road from the existing building.

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

### STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Cornerstone 2020; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area.

### STAFF ANALYSIS FOR REZONING

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Cornerstone 2020.

The site is located in the Neighborhood Form District

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.

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.

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.

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.

**TECHNICAL REVIEW**

- Staff has not received building elevations for review.

**STAFF CONCLUSIONS**

The proposal is ready for a public hearing date to be set.

**NOTIFICATION**

Date	Purpose of Notice	Recipients
5/11/17	Hearing before LD&T on 5/24/17	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Subscribers of Council District 19 Notification of Development Proposals
	Hearing before PC	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Subscribers of Council District 19 Notification of Development Proposals
	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements (13848)
4. Proposed Binding Elements

1. **Zoning Map**



16zone1074

Rev Date 12/14/2018



1000 West 10th Street  
 Des Moines, IA 50319  
 Phone: 515.281.2222  
 Fax: 515.281.2223  
 www.lojic.com

2. Aerial Photograph



### 3. Existing Binding Elements (13848)

- ~~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 density of the development shall not exceed:  
Gross Density: 4.75 units per acre (118 units on 24.82 acres)  
Net Density: 5.88 units per acre (118 units on 24.42 acres)~~
- ~~3. Signs shall be in accordance with Chapter 8.~~
- ~~4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~
- ~~5. 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.~~
- ~~6. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance permit is requested:
  - ~~a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, 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.~~~~
- ~~7. 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.~~
- ~~8. 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.~~
- ~~9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 18, 2007 and May 24, 2010 Planning Commission meetings.~~
- ~~10. At the time a building permit is requested, the applicant shall submit a certification statement to the permit-issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the~~

~~land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.~~

- ~~11. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.~~
- ~~12. As shown conceptually on the detailed district development plan and exhibits presented at the January 18, 2007 public hearing, an open space, park-like feature will be constructed in the upper corner of the development plan adjoining the park. This area will be separated from the park by a secured, gated, wrought-iron style fence, but there will be clear visibility to the park for residents to enjoy a park view. This area will have benches and a sidewalk connection to the remainder of the condominium community.~~
- ~~13. The property line parallel to Heafer Road shall be heavily screened to provide a good transition and privacy for condominium residents.~~
- ~~14. Buildings will be constructed primarily of brick and stone as shown on the renderings produced at the January 18, 2007 and May 24, 2010 public hearings. Other maintenance free materials may be used for dormers, gables and accents.~~
- ~~15. The developer shall grant an easement to MSD for future on-site sewer and drainage infrastructure. The location of the easement shall be determined by MSD and shall be granted at such time as that agency requests it.~~
- ~~16. The developer shall coordinate with the Kentucky Transportation Cabinet and Metro Public Works to ensure that the location of the proposed force main sewer lines shall not interfere with future plans to widen North English Station Road.~~
- ~~17. The proposed buildings, patios, decks and sunrooms on Lots 1-14, 26-36 and 80-93 may consume up to but not more than 40% of the required rear yard area.~~
- ~~18. The approved landscaping plan shall provide for landscaping materials (3 Type A/B trees per 100 linear feet) within the designated landscape buffer areas as shown on the approved preliminary subdivision plan.~~
- ~~19. Covenants, Conditions and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs of certain Planning Commission, Metro Works, MSD or other agency requirements. Among those CCR provisions shall be these requirements: (a) that all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA")/Condominium Association; (b) that any shared water meters and property service connections for sanitary sewers be the sole responsibility of the HOA/Condo Association; (c) that any water, sewer and drainage facilities that cross lot lines be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and (d) that attached residences shall have easements over the adjoining lots of those attached units for purposes of incidental encroachments and property maintenance and repair.~~



#### 4. 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.
3. 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. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Avoca Road to provide a total of 40' feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - 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 minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - 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.
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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the \_\_\_\_\_ Planning Commission meeting.
7. The applicant shall file a formal street closure application for the portion of Avoca Road to the west of the entrance to the subject property before approval of any construction plans for the proposed

development. The applicant shall, should Louisville Metro Government approve the street closure application, remove all pavement from the portion of the road that is closed.

8. The developer shall contribute their prorated portion, not to exceed \$7,700 to the cost of the signal installation at Aiken Rd and N. English Station Rd. This shall be paid within 30 days of the request by the Director of Louisville Metro Public Works.
9. Prior to any site disturbance, the cemetery boundaries shall be defined by a qualified archeologist and documentation of the cemetery boundaries shall be submitted to Planning and Design staff. After the boundary has been approved, all buildings and structures shall be set back at least 30' from the cemetery boundary. The buffer shall be delineated with the installation of temporary fencing during construction. As soon as practical, the owner/developer is required to erect a new permanent fence made of material compatible with the character of the existing cemetery and the surrounding residences.