

PLANNING COMMISSION MINUTES
December 15, 2022

PUBLIC HEARING

CASE NO. 22-ZONE-0065

Request:	Change in zoning from R-5 to R-6, with Detailed District Development Plan with Binding Elements, Variance, and Waiver
Project Name:	Fultz Meridian Avenue
Location:	205 & 207 Meridian Avenue
Owner:	Dan & Cheryl Fultz
Applicant:	Dan & Cheryl Fultz
Representative:	Bardenwerper, Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Dante St. Germain, AICP, Planner II

NOTE: COMMISSIONER PRICE LEFT AND DID NOT VOTE ON THIS CASE

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:

01:11:23 Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Christian Miller, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Mike Hill, Land Development and Design, 503 Washburn Avenue, Louisville, Ky. 40222

Summary of testimony of those in favor:

01:21:15 Christian Miller gave a power point presentation discussing the following: the transition of zoning designations will now make sense; a Tree Inventory was provided; the 2 townhomes will be placed toward the front to create better infill for the properties; the proposed development will be two-stories in height; the fire dept. was fine with the proposal but want the drive lane coming in be identified as a fire lane with no parking allowed; and a proposed binding element #7 - The applicant shall install a

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"NO PARKING – FIRE LANE" sign along the drive lane coming into the site (see recording for detailed presentation). Commissioner Carlson suggests changing the proposed binding element to: The applicant shall install fire lane parking in accordance with Chapter 94 Louisville Metro Code of Ordinances. Mr. Miller agrees. Commissioner Mims asked about consolidation of the 2 lots. Mr. Miller said he can propose a binding element. Dante St. Germain read the following standard binding element as follows: A minor plat or other legal instrument shall be recorded to consolidate the lots (4f) (see recording for detailed presentation).

01:32:25 Mike Hill said the proposal is in the Town Center Form District in Louisville Metro which requires 0 parking spaces for a multi-family unit (see recording for detailed presentation).

Deliberation

01:36:24 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-5 Single Family Residential to R-6 Multi-Family

On a motion by Commissioner Mims, seconded by Commissioner Cheek, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal is not for a zoning district which would permit higher density or intensity uses; the appropriate transitions will be provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal would permit new development providing residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposal would not permit higher intensity or density uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the development would be through an area of higher or similar intensity; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by bicycle, car, transit and pedestrians. Access by people with disabilities will be improved by the development; Transportation Planning has approved the proposal; no direct residential access to high-speed roadways is proposed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, required tree canopy will be provided on the site; No karst features were found on the site; the site is not located in the regulatory floodplain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed zoning district would permit a variety of housing types and would increase the variety of housing in the neighborhood; the proposed zoning district would support aging in place by providing smaller homes which could be obtained by aging residents who do not want a large yard or home to maintain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would encourage intergenerational mixed-income and mixed-use development that is connected to the neighborhood and surrounding area; the site is in proximity to a multi-modal transportation corridor; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs throughout Louisville Metro; no existing residents will be displaced by the proposal; the proposed zoning district would permit innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to R-6, Multi-Family on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Cheek, Howard, Mims and Lewis
NOT PRESENT AND NOT VOTING: Commissioners Clare, Pennix, Price and Sistrunk

Variance from 5.1.12 to exceed the maximum infill setback by a principal structure (required: 11', requested: 142', variance of 131') (22-VARIANCE-0093)

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

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all building codes, including fire codes. The proposed structure will not impact sight lines or obstruct vision clearance; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the neighborhood of the site transitions from residential to non-residential from south to north, with differing setbacks for the non-residential areas; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes. The proposed building will not obstruct vision clearance; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the existing structure which is proposed to be preserved is fairly close to the street and will provide a street experience for pedestrians which is similar to what is present today; and

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WHEREAS, the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone as the property is similar in size and shape to other properties in the subdivision; 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 as the design of the proposed development constitutes buildings surrounding a central parking area. Moving the structures closer to the street would deprive the applicant of adequate parking; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 as the structures have not been constructed and the applicant is requesting the variance.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from 5.1.12 to exceed the maximum infill setback by a principal structure (required: 11', requested: 142', variance of 131') (22-VARIANCE-0093).

The vote was as follows:

YES: Commissioners Brown, Carlson, Cheek, Howard, Mims and Lewis
NOT PRESENT AND NOT VOTING: Commissioners Clare, Pennix, Price and Sistrunk

Waiver from 10.2.4 to allow an easement to overlap a required Landscape Buffer Area by more than 50% (22-WAIVER-0107)

On a motion by Commissioner Mims, seconded by Commissioner Cheek, the following resolution was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the required plantings will still be provided outside the overlap area; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The adjacent property is being used in a similar intensity as what would be permitted by the proposed zoning district; and

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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 as the easement is required and the LBA cannot be moved due to the location of the building.; and

WHEREAS, the Louisville Metro Planning Commission further finds strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because removing the overlap would seriously impact the development and would make development of the site as proposed infeasible.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from 10.2.4 to allow an easement to overlap a required Landscape Buffer Area by more than 50% (22-WAIVER-0107).

The vote was as follows:

YES: Commissioners Brown, Carlson, Cheek, Howard, Mims and Lewis
NOT PRESENT AND NOT VOTING: Commissioners Clare, Pennix, Price and Sistrunk

Detailed District Development Plan with Binding Elements

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

WHEREAS, no natural resources are evident on the site. Tree canopy will be provided; 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 has approved the preliminary development plan; and

WHEREAS, no open space provisions are pertinent to the request. The development does not meet the unit threshold for required open space; 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

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WHEREAS, the Louisville Metro Planning Commission finds, the overall site design is in compliance with existing and planned future development in the area. The density and intensity of the proposed use provides an appropriate transition between the lower-intensity residential to the south and the higher-intensity non-residential to the north; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable requirements of the Land Development Code and Plan 2040 with the exception of the requested waiver. The site plan generally complies with the policies and guidelines of the Comprehensive Plan. The site plan would preserve an existing structure which is part of the fabric of the neighborhood and additionally supply more housing units.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development 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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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, 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. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

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- c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 15, 2022 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
 - e. A road closure approval for the unnamed alley shall be approved prior to requesting any permit.
 - f. 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 prior to obtaining a building permit.
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. Applicant shall install signage and markings identifying the drive lane as a fire lane in conformity with Louisville Metro Code of Ordinances § 94.82.

The vote was as follows:

YES: Commissioners Brown, Carlson, Cheek, Howard, Mims and Lewis
NOT PRESENT AND NOT VOTING: Commissioners Clare, Pennix, Price and Sistrunk