

Planning Commission

Staff Report

February 7, 2019



Case No:	18SUBDIV1025
Project Name:	Dobson Lane Subdivision
Location:	8000 Dobson Lane
Owner(s):	Glenmary Farms LLC
Applicant:	Glenmary Farms LLC
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Waiver** from Chapter 4.8.6.G to allow the streamside and middle buffer zones of a protected waterway to be located on buildable lots
- **Major Preliminary Subdivision** with review of stream and buffer area crossings, and of land disturbing activity on slopes greater than 20%

CASE SUMMARY/BACKGROUND

The applicant proposes a new 80-lot subdivision on two parcels approximately 38.8 acres in total area. Big Run crosses the south-eastern portion of the site, running through an area of steep slopes. The applicant proposes to utilize the Development Potential Transfer provisions of the Land Development Code (LDC) section 4.7.7 to increase density on the flatter areas of the site while preserving most of the slopes in a conservation easement.

The proposed conservation easement encompasses the required buffers around Big Run. LDC section 4.8.6.G requires the streamside and middle zones of the waterway buffer to be located in non-buildable lots. However, the easement area is located at the rear of four buildable lots. The applicant requests a waiver to keep the buffer zones on buildable lots.

A sanitary sewer is located on the opposite side of Big Run from the proposed subdivision. The applicant proposes to connect to this sewer line to provide service to the subdivision, requiring the service line to cross Big Run and the protected waterway buffer zones. The Planning Commission is authorized by LDC section 4.8.6.J to review the applicant's proposal to cross Big Run and the stream buffer zones.

LDC section 4.7.5 regulates land disturbing activity on slopes greater than 20%. The proposed sewer line constitutes a land disturbing activity, which will take place on slopes greater than 20%. Additionally, some of the slopes are located on buildable lots and outside the proposed conservation easement, where construction of homes might take place. The Commission is authorized by section 4.7.5.B to review this activity.

STAFF FINDING

Staff finds that the proposed subdivision generally meets the requirements of the Land Development Code, with the exception of the requested waiver, and is in compliance with the Development Potential Transfer requirements with respect to lot size and number of permitted lots. Staff finds that the

requested waiver is not adequately justified and does not meet the standard of review. The Commission must make a finding regarding the standard of review for crossing Big Run, and for land disturbing activity on slopes greater than 20%.

TECHNICAL REVIEW

Land Development Code (2018) Louisville Metro.

Land Development Code section 4.8.6.J states:

Roads, bridges, trails, and utilities are permitted in a Buffer Area and may cross the protected waterway, subject to the Planning Commission's approval based on the recommendations of the Public Works and DPDS and the MSD.

- The Applicant shall restore any disturbance of the Buffer Area and protected waterway by re-grading and revegetation. See paragraph K, "Restoration," below for applicable standards. Provisions for restoration of the disturbed area shall be included in any development or subdivision agreement for the project, with adequate security to guarantee that the restoration will be completed.

4.8.6.K states:

Restoration

At the time of development, the following restoration standards shall be met.

- Restoration Required to Stabilize Banks. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
- Restoration of Eroded Banks Required. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless the County determines such vegetation would be inadequate to re-stabilize the bank. In instances where the County determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the County shall be utilized.
- Other Restoration Allowed. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.
- The right-of-way shall be the minimum width necessary for installation, access, and maintenance.
- Access for maintenance of utilities in Buffer Areas should be at specific points rather than parallel to the utility corridor.
- The angle of any crossings shall be perpendicular to the protected waterway or Buffer Area in order to minimize clearing and other land disturbance, unless the Planning Commission finds

based on comments from MSD, Public Works or the Planning Director that a perpendicular alignment is not feasible.

- The number of road crossings shall be the minimum number necessary to provide for adequate transportation connections as required in this Land Development Code.
- No more than one fairway crossing associated with a permitted golf course use shall be allowed for every 1,000 linear feet of Buffer Area.
- Trench crossings of rock streambeds visible through the water column or exposed on a seasonal basis shall be restored to a natural appearance using grouting techniques.
- Plans for the crossing submitted with the application shall identify the alignment of the crossing, the proposed construction techniques, the proposed construction and working easements, and mobilization, staging and temporary disposal areas.

Cornerstone 2020.

The plan has received preliminary approval from all applicable agencies.

INTERESTED PARTY COMMENTS

A neighbor identified only as Brad contacted staff to find out if Dobson Lane was proposed to be widened. Dobson Lane is not proposed to be widened at this time. The applicant conducted a neighborhood meeting on October 25, 2018 with numerous neighbors in attendance.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 4.8.6.G TO ALLOW THE STREAMSIDE AND MIDDLE BUFFER ZONES TO BE LOCATED ON BUILDABLE LOTS

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the conservation easement and stream buffers are contained within the development.

- (b) The waiver will violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will violate specific guidelines of Cornerstone 2020 as Livability Goal E2 encourages the minimization of the impact of changing land use on natural features and ecosystems. This guideline is violated because placing the waterway buffer areas onto individually-owned private property runs the risk of the property owners modifying their land in violation of the easement, and places the onus of enforcement onto an easement holder which may or may not have easy access to the privately-owned land to identify such modification.

- (c) The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as the waterway buffers could be placed into a non-buildable open-space lot controlled by the HOA without reducing the number of buildable lots in the subdivision.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The 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.

STAFF: The applicant has not incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived, and the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the waterway buffers could be located in a non-buildable open-space lot while still permitting a reasonable use of the land as no buildable lots would necessarily be lost.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR SECTION 4.7.5.B TO ALLOW LAND DISTURBING ACTIVITY ON SLOPES GREATER THAN 20% ON LOTS CREATED BY MAJOR SUBDIVISION

Land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the following standards:

- (a) The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,

STAFF: The applicant must demonstrate to the Commission that the design and configuration of the utility easement and potential building construction is the minimum disturbance of slopes greater than 20%.

- (b) Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,

STAFF: The applicant has placed a note on the plan indicating that compatible utilities shall be placed in a common trench unless otherwise required by the applicable agencies.

- (c) The Planning Commission may approve the activity if the geotechnical report opines and demonstrates that:
a. The slope's ground surface and subsurface are not unstable;
b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on- site and on adjacent lands; and,
c. If a geotechnical report is required, 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.

STAFF: A geotechnical report was required and provided by the applicant. The applicant must demonstrate compliance with all other provisions to the Commission.

(d) The activity is in keeping with the Comprehensive Plan.

STAFF: The activity is in keeping with the Comprehensive Plan as Livability Goal E2 encourages the minimization of the impact of changing land use on natural features and ecosystems. This guideline is not violated because the buffer crossing and potential building sites are the minimum impact possible to feasibly obtain sewer access for the site, and to create buildable lots on the flatter portions of the site.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision**

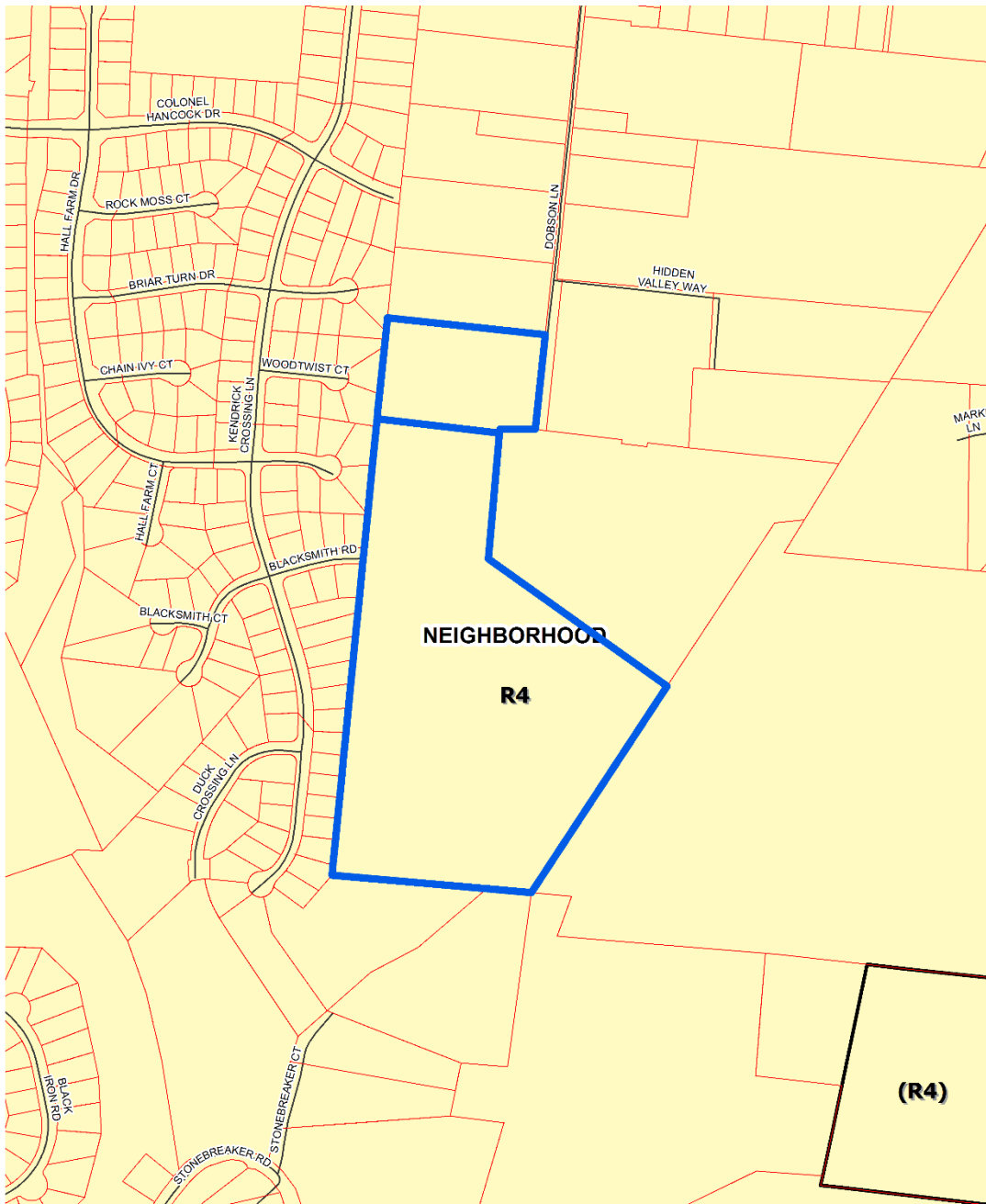
NOTIFICATION

Date	Purpose of Notice	Recipients
01/23/2019	PC Public Hearing	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 22 Persons who signed in at the neighborhood meeting

ATTACHMENTS

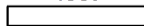
1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map



Dobson Lane Subdivision

feet



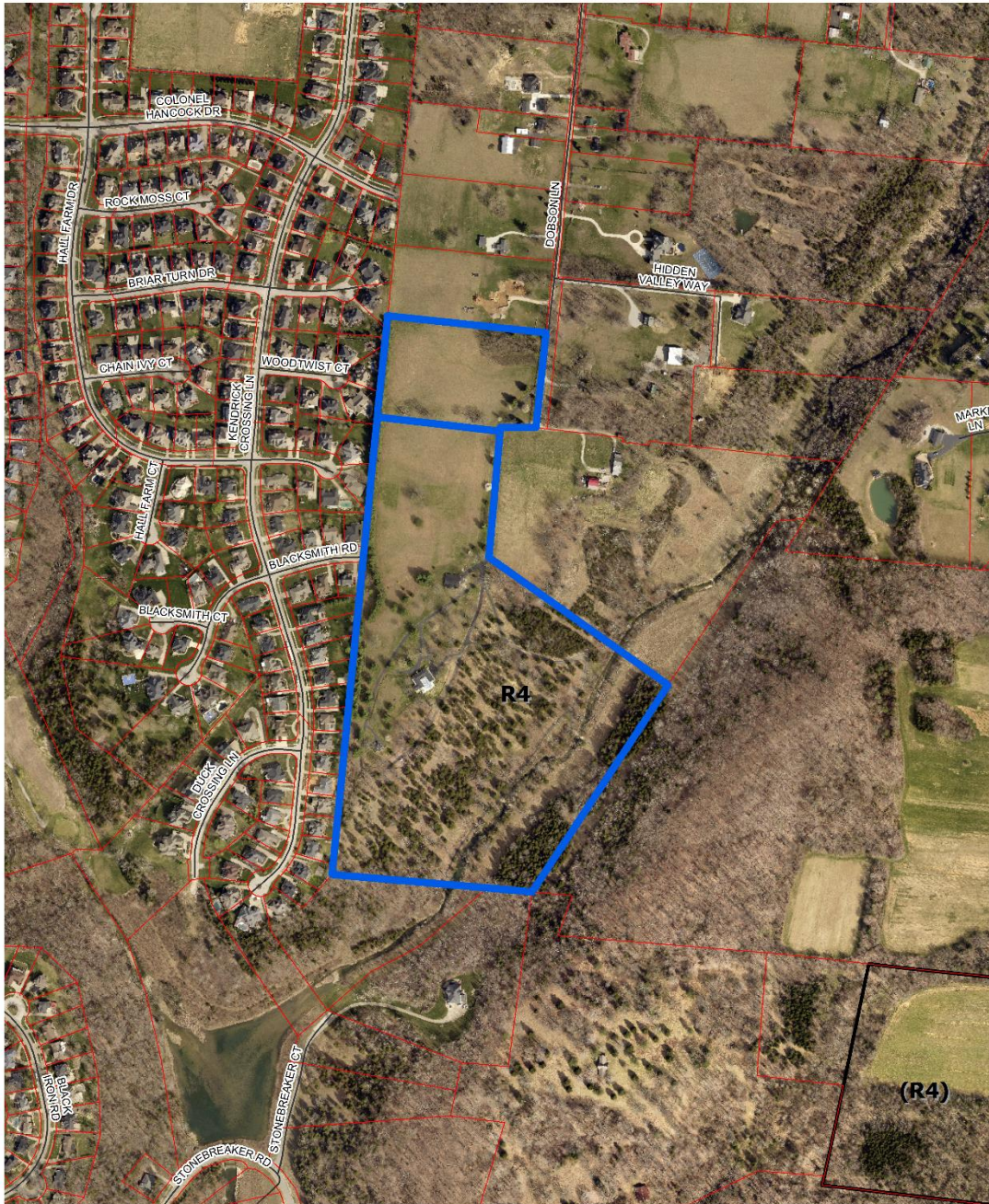
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Map Created: 1/25/2019



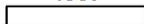
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2. Aerial Photograph



Dobson Lane Subdivision

feet



500

Map Created: 1/25/2019



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3. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
4. 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."
5. 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.
6. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
7. Open space/conservation 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.
8. 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.
9. 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 larvicide 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.

10. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
11. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - 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 noise barriers, maintenance of WPAs, 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.
13. 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.
14. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."