

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

Request: Change in zoning from R-4 to R-5A, with a Conditional Use Permit, and a Detailed District Development Plan with binding elements

Project Name: Freedom Senior Center

Location: 5101 Bardstown Road

Owner: Sanvi Realty LLC

Applicant: Sanvi Realty LLC

Representative: Miller Wihry

Jurisdiction: Louisville Metro

Council District: 22 – Robin Engel

Case Manager: Dante St. Germain, AICP, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:04:24 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:10:25 Commissioner Brown said that, at LD&T, it was suggested that a binding element be added for the age restriction. Ms. St. Germain staff has a standard-language binding element to address age-restricted dwellings, as follows:

“The residents will be restricted in age to 55 and older, in compliance with the Fair Housing Act.”

01:11:04 In response to a question from Commissioner Mims, Ms. St. Germain said the applicant could answer questions about how senior-living was licensed.

01:11:22 In response to a question from Commissioner Jarboe, Ms. St. Germain said the applicant is not attempting to build in the karst areas identified on the site plan and the walking path is being curbed to avoid them.

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

The following spoke in support of this request:

John Miller, Miller Wihry, 1387 South Fourth Street, Louisville, KY 40208

Tika Adhikari, Sanvi Realty, 4511 Bardstown Road, Louisville, KY 40218

Summary of testimony of those in support:

01:12:06 John Miller, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

01:19:50 In response to a question from Commissioner Lewis, Mr. Miller said the existing adult daycare will be removing from their current facility into the proposed new one.

01:20:05 Commissioner Mims asked how the applicant will restrict the occupancy of the apartments to age 55 and over. Commissioner Jarboe said that, if a residential site is specifically designated as 55 and older, then no one under that age can move in. Laura Ferguson, legal counsel for the Planning Commission, explained some specifics about these age restrictions (see recording.) Mr. Miller explained that this is not an "assisted living" facility – the adult daycare is also age 55 and older.

01:22:33 In response to a question from Commissioner Jarboe, Mr. Miller said there will be an elevator in the building.

The following spoke in opposition to this request:

Peggy Uhlman, 5113 Bardstown Road, Louisville, KY 40291

Summary of testimony of those in opposition:

01:22:57 Peggy Uhlman, an adjacent property owner, spoke in opposition (see recording for detailed presentation.) Is concerned about who can live there; also, once this property gets rezoned, what else could be allowed there? She is concerned about a three-story apartment building here; also traffic. She had some questions about the buffer and the treeline – could a fence also be provided?

01:27:01 Mr. Miller said this is a building specifically designed for senior residents, and reiterated that both the apartments and the adult daycare will not be "assisted living" facilities. He said the applicant is trying to provide some additional landscaping between the site and Ms. Uhlman's property. He pointed out the location of an old wire

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

fence that is “enmeshed in the trees” – removing it and building a new one could be detrimental to the trees. That is why the applicant will put in new landscaping. He pointed out the location of an existing wood fence (near the primary use area) that separates the two properties.

00:28:55 Ms. Uhlman asked if there will be on-site management for the apartments. Mr. Miller said he thought there will be resident management in the building.

01:29:11 Ms. Ferguson said that the District Development Plan reflects a senior living facility. Therefore, if the use on this property were going to become something else in the future, any applicant would have to come before the Planning Commission to amend the District Development Plan. Ms. Ferguson discussed this in more detail with the Commissioners.

01:32:09 Commissioners’ 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

01:33:40 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal complies with the Plan 2040 Community Form plan element, as the proposal is for high density residential zoning and the site is located along a transit corridor (Bardstown Road) and near two commercial activity centers; the required yards are being provided with substantial setbacks from adjoining properties; and, the existing structures on the site are proposed to be preserved; and,

WHEREAS, the Commission further finds that the proposal complies with Plan 2040 Mobility plan element, as the proposal is for a high density residential zoning district, and the site is located near existing marketplace corridors and existing activity centers; access to the site is via Bardstown Road; and, no direct residential access to Bardstown Road is proposed; and,

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

WHEREAS, the Commission further finds that the proposal complies with the Plan 2040 Community Facilities plan element, as the appropriate utilities have approved the proposal; and,

WHEREAS, the Commission further finds that the proposal complies with the Plan 2040 Livability plan element, as the proposal preserves most of the tree canopy on the site; the site is located on karst topography, and karst features are being preserved; and,

WHEREAS, the Commission further finds that the proposal complies with the Plan 2040 Housing plan element, as the proposed zoning district would allow the applicant to increase the amount of multi-family housing in the neighborhood, increasing the variety of housing types available; the proposed zoning district would permit inter-generational mixed-income development; the subject site is located between two existing activity centers and is on a major transit corridor; the proposed zoning district change would permit the construction of multi-family housing, increasing the variety of ownership options and unit costs in dispersed locations throughout Louisville Metro; and, the proposal would allow the construction of multi-family housing on the subject site; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-4 Single Family Residential to R-5A Multi Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, Lewis, and Jarboe.

NOT PRESENT: Commissioner Tomes.

Conditional Use Permit (CUP)

01:34:21 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today:

01:34:41 Before the vote was taken, Commissioner Howard noted that Section 4.2.19 of the Land Development Code defines Day Care Facilities as "providing care for

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

more than 6 children". This is a proposed adult daycare. Ms. St. Germain said that daycare facilities are ok for any age/age group and the Land Development Code does not distinguish between children's or adult's daycare.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal does not conflict with any Comprehensive Plan policies. The use of the property as a daycare alongside a senior living facility is an appropriate mix of uses of the site; and

WHEREAS, the Commission further finds that the proposal is compatible with surrounding land uses, as the property is relatively large and the daycare use will be buffered from adjacent residential land uses; and

WHEREAS, the Commission further finds that the subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site; and

WHEREAS, the Commission further finds that the proposal complies with the specific standards required to obtain the requested conditional use permit:

4.2.19 Day Care Facilities (providing care for more than 6 children)

Day Care Facilities may be allowed in the R-R, R-E, R-1, R-2, R-3, U-N, R-5A, R-5B, R-6, and R-7 districts upon the granting of a Conditional Use Permit and in compliance with the listed requirements.

- A. Signs - There shall be allowed one non-illuminated sign identifying the name and use, which sign shall be limited in size to four square feet and be placed on the building.

STAFF: No relief is requested from this provision.

- B. Residential Structure - The structure shall remain or shall be constructed so that the exterior design and ornamentation is residential in character and compatible with the immediate neighborhood, so that there is no evidence from the street that the use is other than residential (except for the sign).

STAFF: The structures that are to be used as part of the daycare are not proposed to be altered.

- A. Alterations or Improvements to the Structure - Where such a use is permitted in a structure which has been used as a residence, the permittee shall make no

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

substantial alterations or improvements to the structure which would impair the structure's use as a residence at a later time.

STAFF: No changes are proposed to the exterior of the structures which are proposed to be used as a daycare.

- B. On-Site Drop-off and Pick-up Area - An on-site area shall be provided where passengers from automobiles may safely exit the automobile and enter the building and vice versa. The design of this area must be approved by the appropriate agency responsible for transportation planning.

STAFF: Transportation Planning has approved the proposed plan which includes a drop-off and pick-up area.

- C. Parking Spaces - The appropriate number of parking spaces shall be provided for members of the day care center staff. The number of parking spaces required pursuant to this section shall be determined by the Board of Zoning Adjustment, and may thereafter be modified by the Board of Zoning Adjustment by petition from the owner of the premises granted a Conditional Use Permit or upon recommendation from the zoning inspector or other authorized personnel after an annual inspection of the premises or other such inspection. The parking layout must be approved by the appropriate agency responsible for transportation planning.

STAFF: The proposed parking layout has been approved by Transportation Planning.

- D. Drainage Control - The development plan shall have the approval of the appropriate agency responsible for surface drainage control.

STAFF: MSD has approved the proposed plan.

- E. All buildings and structures shall conform to the requirements of the zoning and form district in which they are located.

STAFF: No relief is requested from this provision.

- F. Fence - A fence with a minimum height of 4 feet shall be erected around the outdoor play area.

STAFF: No relief is requested from this provision.

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

G. Alterations or Improvements to the Property – Where such a use is permitted on a lot with an existing residential structure; the residential character of the lot shall not be disturbed by exterior changes to the property that are visible from the public street. Off-street parking shall not be located within the front and/or street-side yards. Drop-off and pick-up shall not be located in front yard and/or street-side yard of the existing residential structure, except for driveways approved by Metro Public Works.

STAFF: The lot is not currently used residentially and has not been used residentially for a substantial period of time. The drop-off and pick-up area is not located in the required front yard.

Conditional use permits for Day Care Facilities in R-4 and R-5 zoning districts issued prior to the effective date of this ordinance (March 9, 2011) may continue to operate as authorized under the approved conditional use permit. Upon request by an applicant, such conditional use permits may be modified in any manner the Board determined, in its discretion, to be appropriate.

STAFF: This provision is not applicable.

Now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit under LDC section 4.2.19 for operation of a daycare in the R-5A zoning district (19-CUP-0242)

The vote was as follows:

YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, Lewis, and Jarboe.

NOT PRESENT: Commissioner Tomes.

Detailed District Development Plan

01:36:35 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today:

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

WHEREAS, the Louisville Metro Planning Commission finds that tree canopy and steep slopes on the site are being preserved; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are in question. Metro Public Works has approved the proposed plan; and

WHEREAS, the Commission further finds that open space requirements are being met; and

WHEREAS, the Commission further finds that 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The proposed use is relatively low-intensity and buffering will be provided between the site and adjacent sites; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

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. 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
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,

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0079

contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

8. The multi-family units shall be age restricted to 55 years of age and older to comply with the Fair Housing Act and the Housing for Older Persons Act.

The vote was as follows:

YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, Lewis, and Jarboe.

NOT PRESENT: Commissioner Tomes.