

Planning Commission

Staff Report

June 4, 2020



Case No:	19-MSUB-0018
Project Name:	Watterson Trail Subdivision
Location:	6106 South Watterson Trail
Owner(s):	Clarence & Lucille Schmitt
Applicant:	Highgates Development
Jurisdiction:	Louisville Metro
Council District:	23, 24 – James Peden, Madonna Flood
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUEST(S)

- **Waiver** of Land Development Code section 7.3.30.E to allow more than 15% of a required rear yard of a buildable lot to be occupied by a drainage easement (20-WAIVER-0009)
- **Major Subdivision Plan** with review of land disturbing activity on slopes greater than 20%

CASE SUMMARY/BACKGROUND

The applicant was proposing to create 133 single family residential lots on 34 acres, but after the May 21, 2020 Planning Commission hearing, they revised the plan to show 128 buildable single family lots, using the LDC's Development Potential Transfer guidelines (LDC 4.7.7) due to the presence of steep slopes greater than 20%. The proposal includes seven (7) non-buildable lots, approximately 211,074 square feet (14%) of open space, and three detention basins. The subject site is zoned R-4 Single Family Residential in the Neighborhood form district. Access to the subdivision will be via an extension of Fair Lane, and stub streets will be provided to serve future development on adjacent lots. The site is located in the Highview and Fern Creek areas of southeastern Louisville Metro. It is located on the west side of S Watterson Trail, south of S Hurstbourne Parkway and north of Ferndale Road.

The subject site contains steep slopes, a USGS intermittent stream, and a circa 1910 structure. The applicant has completed a geotechnical report per LDC 4.7.5 and will develop the property according to the findings. There is an intermittent blue-line stream on the subject site, and the applicant will provide the buffer to protect it per MSD requirements (including a 25 foot stream buffer). Urban Design staff has reviewed the proposed development and determined that, due to the circa 1910 structure, the site will be subject to the requirements of the Wrecking Ordinance Subsection 150.111 and a potential 30-day hold on the permit. Tree canopy requirements of the Land Development Code will be provided on the subject site.

LDC section 4.7.5 regulates land disturbing activity on slopes greater than 20%. Some of the slopes are located on buildable lots, where construction of homes might take place. Large portions of the slopes are also located on open space lots. The Commission is authorized by section 4.7.5.B to review this activity.

The applicant is requesting to allow more than 15% of a required rear yard of a buildable lot to be encompassed by a drainage easement. There is a 15 foot Sanitary and Drainage Easement that runs along the rear of many of the proposed lots in the subdivision. The dimensional standard for a rear yard in this subdivision is 25 feet.

This case was heard before Planning Commission on March 5, 2020. It was determined that the applicant should provide sidewalks where the development abuts S. Hurstbourne Parkway, and that the plan should be revised to reflect the future widening of Watterson Trail. The case was rescheduled for Planning Commission on April 2, 2020, however it was continued to May 21, 2020 due to COVID-19. On May 21, the case was again postponed to further research the Balance Transfer Lot Calculation and the Watterson Trail widening.

STAFF FINDING

Staff finds that the proposed subdivision generally meets the requirements of the Land Development Code and complies with the Development Potential Transfer requirements with respect to lot size and number of permitted lots. Staff finds that the waiver is adequately justified and meets the standard of review. The Commission must make a finding regarding the standard of review for land disturbing activity on slopes greater than 20%.

TECHNICAL REVIEW

Per Land Development Code section 4.7.7, major subdivision development proposals submitted after the effective date of this regulation and which permanently preserve areas of the site with slopes greater than 20% may transfer the development potential (building sites or floor area) of the permanently preserved area to the remainder of the site subject to specified limitations. These limitations include, but are not limited to:

A.3. The area of the site to which development potential is being transferred is at least as large as the area from which development potential is being transferred...

A.4. All lots in the proposed development meet the minimum alternative development incentive lot size of the applicable Form District...

The Alternative Development Incentives regulation as outlined in Land Development Code section 5.3.1.D.2.a states that the minimum lot area in an R-4 district shall be 4,500 square feet, no more than 25% of detached units may have a lot area less than 6,000 square feet, and at least 20% of the lots in the development are 9,000 square feet in area or greater.

The maximum development potential allowable for transfer shall be determined by one of two methods. The applicant's proposed plan uses the Maximum Balance Transfer Lot Calculation, per LDC 4.7.7.B.1:

- One half of the theoretical development potential based on the number of acres preserved and the existing zoning of the area to be preserved (for example; if 3 acres of an R-4 site is proposed for protection, then 7 building sites could be transferred to other portions of the same property – $3ac \times 4.84 \text{ units/acre} / 2 = 7.26 \text{ units}$)

INTERESTED PARTY COMMENTS

Staff has received emails in opposition to this proposal, which are included in the case file. Councilman James Peden also voiced his concerns at the May 21, 2020 Planning Commission hearing.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.E TO ALLOW MORE THAN 15% OF A REQUIRED REAR YARD OF A BUILDABLE LOT TO BE OCCUPIED BY A DRAINAGE EASEMENT

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

STAFF: The waiver will not adversely affect adjacent property owners as the rear yards overlap with a drainage easement that will only affect the property owners of the new lots. The parcels that are adjacent to the new lots are developed with single-family homes or are identified by PVA as agricultural uses.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address drainage easements, and addresses yard requirements only as buffers between incompatible uses. The adjacent uses are not incompatible with the proposed use.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the overlap is made necessary by a drainage easement to the rear of the new lots, which is the appropriate place for a drainage easement.

- (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 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 by requiring the applicant to move the easement or extend the rear yards, either of which would reduce the usability of the property.

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 Plan 2040.

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 a portion of the steep slope areas are located in open space lots that will not be disturbed by the development.

REQUIRED ACTIONS:

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

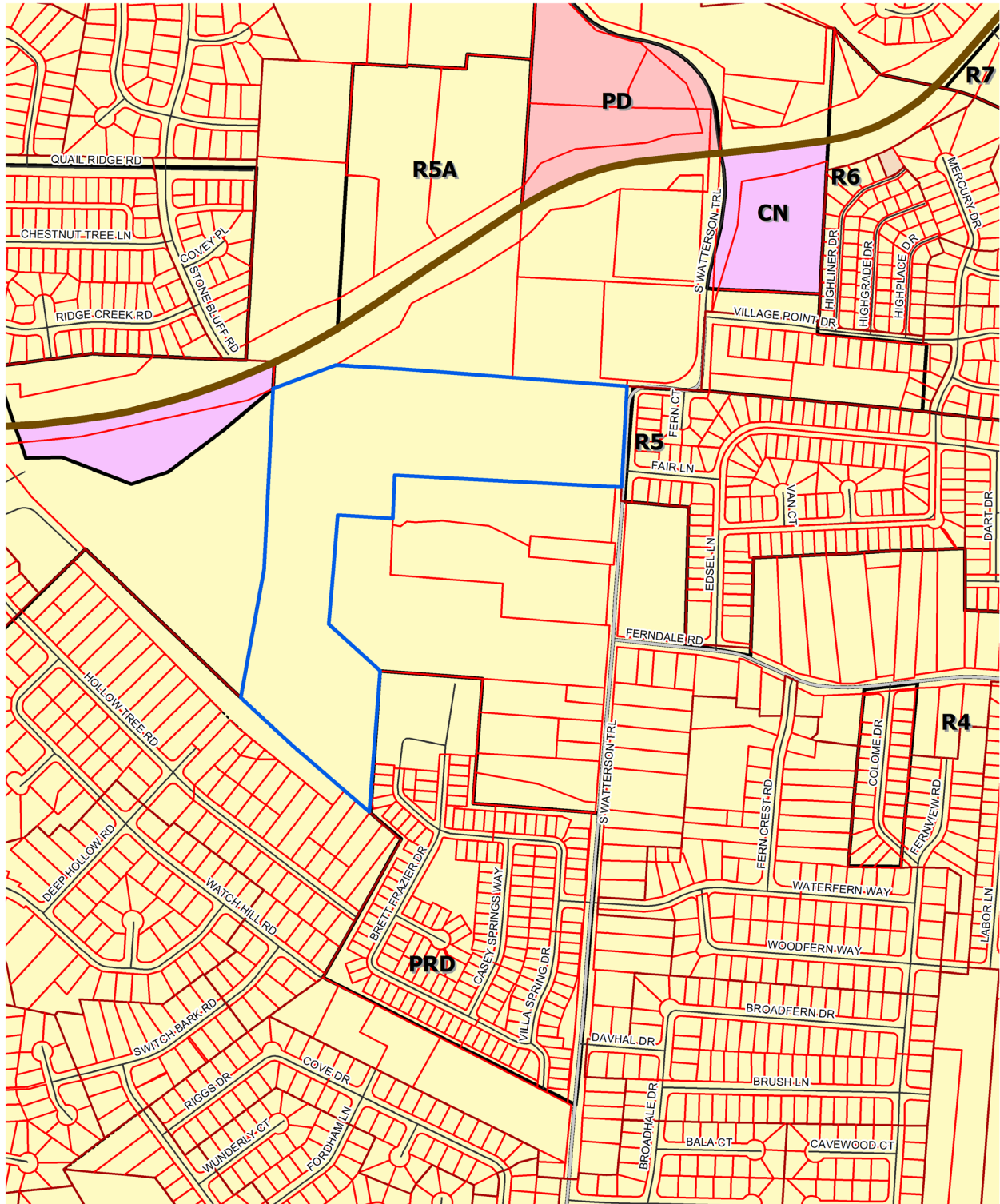
NOTIFICATION

Date	Purpose of Notice	Recipients
3-5-2020	Hearing before LD&T	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 23,24
4-2-2020	Hearing before Planning Commission	
5-21-2020	Hearing before Planning Commission	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 23,24
6-4-2020	Hearing before Planning Commission	

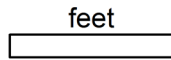
ATTACHMENTS

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

1. **Zoning Map**



6016 S WATTERSON TRAIL



Map Created: 1/31/2020



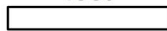
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2. Aerial Photograph



6106 S WATTERSON TRAIL

feet



640

Map Created: 1/31/2020



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3. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Major Subdivision 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 larvacide 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."