

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
Special Night Hearing
April 12, 2021**

A special meeting of the Louisville Metro Planning Commission was held on April 12, 2021 at 6:30 p.m. via Cisco Webex Video Teleconferencing and in person at The Jeffersonian, 10617 Taylorsville Road, Jeffersontown, Kentucky, 40299.

Commission members present:

Marilyn Lewis
Lula Howard
Jeff Brown
Rich Carlson
Jim Mims
Patricia Clare
Te'Andre Sistrunk
Ruth Daniels
Pat Seitz

Commission members absent:

Robert Peterson

Staff Members present:

Emily Liu, Planning and Design Director
Brian Davis, Planning and Design Manager
Julia Williams, Planning Supervisor
Dante St. Germain, Planner II
Beth Stuber, Engineering Supervisor
Tony Kelly, MSD
Travis Fiechter, Legal Counsel

The following matters were considered:

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20-ZONE-0060

Request: Change in Zoning from R-4 to R-6, Waiver of 10.2.4.B.3 to allow a utility easement to overlap a required Landscape Buffer Area more than 50%, Variance from 5.4.2.A.4 to encroach into the required 50-foot setback for three-story buildings from single-family detached residential development, and Detailed District Development Plan/Major Preliminary Subdivision Plan with Binding Elements

Project Name: Cedar Creek Road Apartments
Location: 8000 & 8006 Cedar Creek Road, Parcel ID 065000310000
Owner: Angela Nicole Stivers, Stacey Nunez, Joseph Kevin Wright
Applicant: Hagan Properties
Representative: Bardenwerper, Talbott & Roberts PLLC
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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report via a PowerPoint presentation (see video for full presentation). The applicant is requesting a change in zoning from R-4 single family residential to R-6 residential, a waiver, a variance, and detailed district development plan/major preliminary subdivision with binding elements. The proposal is for 324 multi-family units on 19.7 acres. Staff's finding is that the plan is not in compliance with Plan 2040.

Commissioner Mims asked for clarification about the variance request and the traffic study.

Dante St. Germain stated the variance was to allow a three story to be closer than 50 feet from a property line, not an actual height variance for the proposed height of the building.

Beth Stuber stated traffic studies may be required if the project is in a potential problem area. The study was requested due to the recent increase in development in the area.

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Commissioner Carlson asked for clarification about the location of this project in relation to other recent developments. Dante St. Germain explained there was a conservation subdivision approved on parcels located to the north and the proposed road at the rear of this proposed development would line up with the road on this conservation subdivision.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Roberts & Talbott PLLC, 1000 N. Hurstbourne Parkway, Louisville, KY 40224

Wendy Hagan, Hagan Properties, 12911 Reamers Road, Louisville, KY 40245

Kevin Young, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Diane Zimmerman, Diane B. Zimmerman Traffic Engineering, 12803 High Meadows Pike, Prospect, KY 40059

Summary of testimony of those in favor:

Bill Bardenwerper spoke on behalf of the applicant and presented a PowerPoint presentation (see video for full presentation).

Wendy Hagan, Hagan Properties, is the applicant. Hagan provided an overview of the company and why they believe the development offers a new product to the area and is appropriate for this location.

Bill Bardenwerper resumed his testimony. Bardenwerper provided site context information in relation to other residential and commercial developments that have been approved and/or constructed in the area. The Cedar Creek treatment plant has capacity to handle the sewer needs of development in the area.

Kevin Young, Land Design & Development, testified on behalf of the applicant. Young explained how the applicant dealt with the existing site conditions to come up with the site design. An exhibit was provided to show how future road connections could be developed on adjoining parcels to connect to existing/proposed stubs in the area.

Bill Bardenwerper resumed his testimony. This series of slides included sample pictures and exhibits of the proposed buildings. Bardenwerper also presented examples from Plan 2040 showing predicted population, employment and household growth in the area.

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Bardenwerper said the Louisville Housing Needs Assessment clearly states a variety of housing like this proposal is needed in the community.

Diane Zimmerman spoke in support of the application. Zimmerman prepared the traffic impact study and revisions to add traffic from Southpointe Commons and other approved development to Bardstown Road. The results of the analysis are that the intersections will function at appropriate levels.

Bill Bardenwerper summed up his testimony by stating the proposed development is in compliance with the comprehensive plan for numerous reasons.

The Planning Commissioners asked questions of the applicant.

Commissioner Howard asked the proposed setback from the three-story building to the house to the north. Kevin Young stated it is 15 feet to the property line and approximately 55 feet to the actual home on the adjoining property. The building in questions will have adequate design on both street frontages.

Commissioner Carlson asked questions about the revised traffic study. Diane Zimmerman stated there are different standards for level of operations for Bardstown Road and the intersection of Cedar Creek Road and Bardstown Road will operate within acceptable levels as determined by the Kentucky Transportation Cabinet. Zimmerman clarified that Cedar Creek will operate at a level of service E and there will be a reduction in time on the Brentlinger side with the installation of a turn lane (which the applicant is proposing).

Commissioner Carlson asked why the property is more appropriate for multi-family than single-family development. Wendy Hagan said it is her opinion as a real estate developer that it would be cost prohibitive to develop the site as a single-family development. Bill Bardenwerper expanded upon that opinion.

Commissioner Carlson asked the applicant to expand upon how this development will provide additional housing options that aren't available in the area. Bill Bardenwerper stated this area of the community could use a high-quality multi-family development like this and it will help spread out the housing choices and provide a new choice in the area.

Commissioner Brown asked about the pavement width of Cedar Creek Road. Kevin Young stated three measurements were taken, with measurements ranging from 18 feet to 20 feet along the frontage of the proposed development.

Commissioner Carlson asked about the build year, to which Diane Zimmerman answered 2023.

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Commissioner Mims asked about the proposed road improvement that was being offered by the applicant. Bill Bardenwerper stated it is a turn lane going east to south.

The following spoke neither for nor against the request:

None.

Summary of testimony of those neither for nor against:

None.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Kenneth Shake, 8321 Cedar Creek Road, Louisville, KY 40291

Chet Needy, 10000 Cedar Garden Drive, Louisville, KY 40291

Summary of testimony of those in opposition:

Steve Porter asked two cross-examination questions. The first question was regarding the width of the old bridge on Cedar Creek Road. Kevin Young stated he did not measure the old bridge and was not comfortable guessing the width. Porter also asked Wendy Hagan why she felt the proposed three-story buildings were comparable to the existing building height character on Cedar Creek Road. Hagan responded the number of units and height of building provides the type of community that is needed in the area.

Steve Porter spoke in opposition to the request and provided a PowerPoint presentation (see video for full presentation). Porter stated the proposed project is in the wrong place at the wrong time because it is too dependent on other improvements or amenities that may not come to fruition. The neighbors he represents are against the plan because it is against the comprehensive plan and the Fern Creek Small Area Plan. Porter presented a series of findings why his clients believe the application should not be approved.

Kenneth Shake spoke in opposition to the application. Shake is a third-generation resident on Cedar Creek Road. He typically does not oppose development but thinks the Planning Commission should be aware of the hazardous road conditions that are around the proposed development. He does not feel Cedar Creek Road can handle the additional traffic.

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Chet Needy spoke in opposition to the application and provided a PowerPoint presentation (see video for full presentation). The slides contained pictures of other houses, developments and road conditions along Cedar Creek Road. He is of the opinion that this development is not in character with the area.

Steve Porter resumed his testimony and provided a summary of comments provided in opposition to the request. In summary, the proposed application is incompatible with the area, there isn't adequate connection, and this plan should not be approved.

The Planning Commissioners asked questions of those in opposition to the application.

Commissioner Mims asked Ken Shake for clarification about the narrow bridge he referenced. Both he and Steve Porter provided clarification. Porter also stated he believes one of the houses on the development site may be of historic significance. Dante St. Germain said Urban Design did review the application and neither property is eligible for National Historic listing because of loss of historic integrity.

Rebuttal

Bill Bardenwerper provided rebuttal to the testimony provided by the opposition. Bardenwerper said areas like this are ripe for development and provide an opportunity to meet the community's development needs. The applicant is addressing some needs to help get the community closer to where it needs to be in terms of connectivity, traffic mitigation, and housing choices. The proposed development meets many aspects of Plan 2040, the comprehensive plan is not a straight jacket, and this development complies with enough policies to warrant approval.

Deliberation

Planning Commission deliberation.

The Planning Commission came out of business session. John Talbott, Bardenwerper, Talbott and Roberts, stated the applicant would like to change the plan so that no variance is needed. Dante St. Germain stated this means the one building which necessitated the variance (Building #13 on the plan presented at the hearing) would be changed to a two-story building.

The Planning Commission resumed 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.

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Zoning Change from R-4 to R-6

3:49:11 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the reasons described in the staff report and the opposition's testimony that was heard today was adopted.

WHEREAS, Staff finds that the proposed zoning change is not in compliance with the guidelines of the Comprehensive Plan; and

WHEREAS, the site is not well connected to the neighborhood and is not in proximity to an activity center or transit corridor; and

WHEREAS, the site is relatively far from Bardstown Road, which is the nearest transit and commercial corridor to the site, and the sidewalk network in the neighborhood is poorly connected; and

WHEREAS, the proposal is for a medium-high density of development (17.32 dwelling units/acre) without the connectivity and access that Plan 2040 recommends for higher density and intensity of development; and

WHEREAS, the proposed zoning district would be appropriate at a location closer to Bardstown Road, or in a neighborhood with a connected sidewalk network that would permit residents to safely access the nearest transit and commercial corridor; and

WHEREAS, the lack of access and connectivity for future residents creates a situation of conflicting guidelines in Plan 2040; and

WHEREAS, the requirement that residents rely on car access to reach goods and services negates the advantages of higher-density multi-family development; and

WHEREAS, the proposed zoning district is not generally in compliance with the plan elements or CHASE principles of Plan 2040; and

WHEREAS, the Appropriate transitions are not being provided between the higher-density development on the site and the lower-intensity development adjacent to the site;; and

WHEREAS, the existing structures and natural features of the site are not proposed to be preserved; and

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WHEREAS, the existing structures on the site are not proposed to be preserved; and

WHEREAS, the proposal does not comply with the intent and applicable policies of the Community Form Elements of Plan 2040. The new development is not compatible with the scale and site design of nearby existing development, as evidenced by the many objections, exhibits and presentations from the nearby public; and

WHEREAS, the proposal violates Community Form Goal 1, Policy 2.1.2 of Plan 2040 because the intensity and density of the proposed land use is not compatible with existing land uses. The proposal violates Goal 1, Policy 2.1.4 because its mass, scale, height, orientation, setback and design are not compatible with existing properties. The 3-story buildings are totally out of character with the existing buildings in the area. It violates Goal 1, Policy 4 because it is not compatible with the scale and site design of nearby existing development. It violates Goal 1, Policy 7 because there are no public transit corridors, employment centers or activity centers near the site. It is far removed from any of these and is along a narrow residential road with no sidewalks or bike lanes. It violates Goal 1, Policy 9 because the requested 35-foot variance does not allow an appropriate transition between 3-story multi-family buildings and single-family development. It violates Goal 1, Policy 11 because its setbacks and building heights are incompatible with nearby developments. It violates Goal 1, Policy 17 because its traffic impact will be harmful to nearby existing communities.; and

WHEREAS, the proposal violates Community Form Goal 2, Policy 11 of Plan 2040 because the placement, design and scale is not compatible with nearby residences. It violates Goal 4, Policy 2 because the existing structures and natural features of the site are not being preserved. It violates Goal 4, Policy 3 because the existing structures on the site are eligible for the National Register of Historic Places and are not being preserved.; and

WHEREAS, the proposal violates Mobility Goal 1, Policy 1.1 of Plan 2040 because there is no pedestrian or bicycle facility from the development to neighborhood centers, shopping facilities or employment centers. It violates Goal 1, Policy 1.6 because there is no accessible walkway to public transportation stops. It violates Goal 1, Policy 4 because this high-density apartment proposal is not within or near marketplace corridors, employment centers or public transportation. It violates Goal 2, Policy 4 because it allows access on a secondary collector through areas of significantly lower intensity and density and will cause significant nuisances. It violates Goal 3, Policy 2 because it is not easily accessible by bicycle, transit, pedestrians or persons with disabilities. It is not near an employment center; and

WHEREAS, the proposal violates Livability Goal 1, Policy 1 of Plan 2040 because it is not a conservation subdivision on a site that would be very appropriate for such a use. It

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violates Goal 1, Policy 12 because it does not minimize impervious surface area on the site; and

WHEREAS, the proposal violates Housing Goal 2, Policy 2 of Plan 2040 because it is not within proximity to multi-modal transportation corridors, employment opportunities, or amenities providing neighborhood goods and services. It is not on a transit corridor or near an activity center; and

WHEREAS, the Fern Creek Plan locates this site in Quadrant III: Southwestern Quadrant a “Third Tier” land use area. The plan describes the Third Tier as follows: “Surrounding the second tier there should be mostly low-density developments such as single-family residential, open space, and agricultural land uses. The third tier should encompass all of the land south of the Gene Snyder Freeway....” Therefore, the proposed multi-family development violates the recommendations contained in the Fern Creek Small Area Plan, a plan still in effect;

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to Metro Council the change in zoning from R-4 Single Family Residential to R-6 Multi-Family Residential on property described in the attached legal description be **DENIED**.

The vote was as follows:

YES: Commissioners Daniels, Clare, Sistrunk, Carlson, Brown and Lewis.

NO: Commissioners Mims, Seitz, and Howard

NOT PRESENT AND NOT VOTING: Commissioner Peterson

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ADJOURNMENT

The meeting adjourned at approximately 10:05 p.m.

Chair

Planning Director