

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0078

Request: Change in zoning from R-4 to R-6 with a Detailed Plan
Project Name: Beulah Church Road Apartments
Location: 9108 Beulah Church Road
Owner: EMM3, LLC
Applicant: EMM3, LLC
Representative: Paul Whitty - Bardenwerper, Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel

Case Manager: Joel P. Dock, 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:

00:36:42 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:39:39 In response to a question from Commission Mims, Mr. Dock said the proposal meets the design guidelines.

The following spoke in support of this request:

Paul Whitty, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway
2nd Floor, Louisville, KY 40223

Kathy Linares, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY
40219 (signed in but did not speak)

Brad Mohr, EMM3, 11414 Main Street Suite 202, Louisville, KY 40243

Summary of testimony of those in support:

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00:40:17 Paul Whitty, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He noted that an adjacent residual tract of land, designated as a "post office", will be a mail distribution center, and will **not** be open to the public. It will be a fenced, fully secure site. He explained that, in the event that this tract is not developed for the distribution facility but instead becomes a residential development, a binding element states that a connection can be made to connect from this property to that site.

00:46:20 Commissioner Carlson asked if there was a way to provide pedestrian connectivity to the retail center adjacent to the residual ("post office") tract. Mr. Whitty said the applicant would be willing to do that; however, the Post Office requires distribution sites to be fully secured with no public access. See applicant's binding element regarding this.

00:47:40 In response to a question from Commissioner Mims, Brad Mohr, representing the builder/developer and property management company, discussed some aspects of the management of the apartments. He said this is a local company, and the complex will be managed locally but off-site.

The following spoke in opposition to this request:

No one spoke.

00:48:50 Commissioners' deliberation.

00:50:42 Commissioner Carlson discussed the binding element regarding cross-connectivity. He asked if this could be left open to other purposes instead of limiting it to residential development. Mr. Dock clarified some issues regarding cross-connectivity (see recording.) Mr. Whitty said the Post Office has closed on the property, and will be building the distribution facility. He said that if, in the future, this property is developed for commercial use, the applicant would be willing to make a pedestrian connection there.

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

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00:56:31 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Plan 2040 Staff Analysis, the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the Louisville Metro Planning Commission finds that the proposal meets the intents of Land Use & Development Goal 1: Community Form because the proposal is near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned; the proposed district is located roughly ¼ mile west of a major transportation corridor, employment center, and activity centers for services and amenities; and the proposed district abuts similar multi-family districts and vacant property. Appropriate transitions will be provided as required; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Form because the land is currently vacant, and the proposed district will result in residential development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Community Form because the site does not appear to possess any issues related to wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 4: Community Form because the site does not appear to contain distinctive cultural features; and this site will be subject to the requirements of the Wrecking Ordinance Subsection 150.110 and a potential 30-day hold on the permit. Documentation of the structure may be required prior to wrecking; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Mobility because the proposed district supports transit-oriented development and an efficient public transportation system. It is in a mixed intensity and density area that is 1/4 miles from Bardstown Road, which provides primary and secondary activities and services. Bardstown Road also provides for public transit service to employment and activity centers downtown or elsewhere along the corridor; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Mobility because access to the proposed district would not create a significant nuisance given these conditions. The proposed district is located in

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a mixed intensity and density area that is 1/4 miles from Bardstown Road, which provides primary and secondary activities and services; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Mobility because the proposed district encourages a mixture of compatible land uses. The development will provide for minimum improvements to the network to ensure that the site is accessible; right-of-way dedication is provided to ensure necessary improvements may be made in the future; and no direct access to high speed roadways is provided for individual units; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Facilities because the proposal is in an area served by existing utilities or planned for utilities as evidenced by adjacent development; the proposal would appear to have access to an adequate supply of potable water and water for fire- fighting purposes as evidenced by adjacent development; and MSD preliminary approval has been received. MSD will ensure that all development has an adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Livability because Tree canopy will be provided as required by the Land Development Code; the subject property does not appear to be significantly vulnerable to erosion or impacts from ground water; the development site is not located in the floodplain; the proposed district encourages a variety of housing types to be concentrated near major transportation facilities within proximity of single-family district and adjoining similar densities; development will reflect the pattern of the form district; and the proposed district promotes housing options and environments that support aging in place as senior, independent, and assisted living are permitted within the district. The district is located within proximity to Bardstown Road, which provides primary and secondary goods and services; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Housing because the proposal district supports intergenerational and mixed-income development that is connected to the immediate neighborhood; and the district is located within proximity to Bardstown Road, which provides primary and secondary goods and services. Minimum improvements along the development site will be provided to allow for ease of access; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Housing because the proposed district encourages fair and affordable housing by allowing a variety of ownership options and unit costs throughout

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Louisville Metro; the district expands opportunities for people to live in quality, variably priced housing in locations of their choice by enabling the provision of affordable and accessible housing in dispersed locations throughout Louisville Metro; the proposed district allows for an increase in residential occupancy where a single-family home is currently present; the proposed district encourages the use of innovative design methods by expanding the ability to provide a variety of housing types and styles; and the proposed district better serves the needs to provide affordable housing than the current district; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form – Goal 1 because the application complies with the applicable Policies 7 and 9 because the community form for this area is Suburban Neighborhood which, as noted above, is characterized by predominantly single family and multi-family residential uses varying from high density to low density, meaning that a lot of apartments are located in Suburban Neighborhood Form Districts such as in this area; with a large number of apartment complexes, such as located near this property. This project will fit well and blend compatibly into the existing neighborhood, in part because there are multiple other multi-family developments along the south side of Beulah Church Road such as this one, with single family residential across from the site; adjacent to the east will be a United States Post Office secure carrier facility; this project will offer another diverse housing opportunity with these other developments, some of which have been existing for some time and will be of a scale compatible with these nearby projects; that, among other reasons, may very well be why the Suburban Neighborhood Form District contemplates uses such as this kind, both in the specific language contained within the description of the Suburban Neighborhood Form District found within Plan 2040; and as evidenced by the fact there are multiple other residential uses varying from low to high density already located in Suburban Neighborhood Form Districts and the proposed development provides appropriate transitions with respect to setbacks and landscaping as shown on the proposed development plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 2 because this application complies with Policy 9 as the land is currently vacant and the proposed rezoning will result residential development in an area of both multi-family and single family residential development near the Bardstown Road commercial corridor with access to employment, goods and services; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 3 because this application conforms to Policy 10 as the site does not have any issues relating to highly permeable soils or slopes with the potential for erosion; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Goal 4 because the site does not contain any distinctive cultural features that would require preservation and although there is a house on the site that based upon its age (built 1948) is technically eligible for National Register Listing or local landmark designation, it does not appear to have any unique architectural or historical significance and is therefore in compliance with Policies 2 and 3; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility - Goal I because this application complies with Policy 4 as the site is located in a mixed intensity and density area ¼ mile from Bardstown Road, which provides goods and services and public transit is available to this corridor as well as to downtown employment centers; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 2 because this plan meets Policy 4 as it is accessible to goods, services and employment without causing significant nuisances; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 3 because the proposed plan complies with Policies 2, 5, 6, 9, 10 and 21 as it contributes to a mixture of compatible uses easily accessible by the various modes of transportation and dedicates additional right of way to the Beulah Church Road arterial and the site has no direct access to high speed roadways; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Facilities - Goal 2 because the application complies with Policies 1, 2 and 3 because the site is located in an area served by existing and planned (sewer extension from adjacent Post Office property), has access to potable water and water for firefighting purposes and will provide detention as approved by MSD to ensure there are no negative impacts to stormwater runoff or water quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Livability – Goal 1 because the proposed plan complies with Policies 5, 17 and 21 as tree canopy will be provided in compliance with the LDC requirements and a karst survey has been performed (dated 10/10/19) which did not reveal any active sinkholes and the site is not located in a floodplain; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing – Goal 1 because the proposed development serves to promote diversity in housing reflecting the form district pattern with proximity to a commercial corridor providing goods and services with mass transit available in compliance with Policies 1 and 2; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Goal 2 because the proposed plan complies with Policies 1 and 2 as it provides for inter-generational and mixed-income housing opportunities that is connected to the immediate neighborhood proximate to the Bardstown Road corridor which provides essential and convenient goods and services; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 3 because this plan complies with Policies 1, 2 and 3 because it provides affordable housing with a variety of ownership options land increases efficient, residential occupancy on an underutilized site with a affordable housing in the area; 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 to R-6, multi-family 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.

Detailed District Development Plan

00:57:40 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, 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 conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be conserved as the development plan meets the requirements of the Land Development Code; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community

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has been provided as public sidewalks are provided and connectivity within the development to public ways is provided; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided. Minimum 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 proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the development is compatible in scale and density with abutting uses and structures; and

WHEREAS, the Commission further finds that the proposed development plan conforms to Plan 2040. The proposal provides opportunities to provision fair and affordable housing. The development will provide for minimum improvements to the transportation network. No direct access to high speed roadways is provided for individual units. The proposal is in a mixed intensity and density area that is 1/4 miles from Bardstown Road, which provides primary and secondary activities and services. Access to the subject site would not create a nuisance to lower density uses; 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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:

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- a. The development plan must receive full construction approval from Develop Louisville, 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
3. 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.
 4. 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.
 5. 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.
 6. In the event the residual tract (future post office) is developed for residential purposes, cross connectivity and reciprocal access shall be provided between the two sites.

The vote was as follows:

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

NOT PRESENT: Commissioner Tomes.