

**PLANNING COMMISSION MINUTES**  
**August 5, 2021**

**PUBLIC HEARING**

**CASE NO. 21-ZONE-0023**

Request: Change in zoning from R-4 to R-5, with Detailed District Development Plan/Major Preliminary Subdivision and Binding Elements, and Waivers and Variance  
Project Name: Parkside Subdivision  
Location: 7507 ½ & 7509 Mt. Washington Road, Parcel ID 008601810000  
Owner: Joe & Doris Keith, Atlas Metal Investment Corp, John Andrew Keith Living Trust  
Applicant: Ball Homes  
Representative: Bardenwerper, Talbott & Roberts  
Jurisdiction: Louisville Metro  
Council District: 23 – James Peden  
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:**

05:53:08 Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report (see recording for detailed presentation).

**The following spoke in favor of this request:**

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223  
Rocco Pigneri, 13301 Magisterial Drive, Louisville, Ky. 40223  
Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059  
David Mindel, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

**Summary of testimony of those in favor:**

John Talbott gave a power point presentation. R-5 will provide some differences in home choices and diversity (see recording for detailed presentation).

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Rocco Pigneri stated he received the guidelines concerning street naming from the Hillview Fire Dept. Three more street names are required and have been submitted and approved by Beth Allen (see recording for detailed presentation).

Diane Zimmerman answered Commissioner Carlson's question dealing with widening Mt. Washington Rd. and the radius issue. That project hasn't been funded and no design work done on it. The radius issue can be solved by buying more right-of-way from the adjacent neighbors (see recording for detailed presentation).

David Mindel stated the minimum radius that the state would approve is 35 feet. That would equal 17 feet on both sides and will not meet Metro standards (see recording for detailed presentation).

**Rebuttal**

John Talbott waived.

**Deliberation**

Planning Commission 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 Change from R-4 to R-5**

On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal is not for higher density or intensity zoning; the proposed zoning district would allow uses that are substantially similar in scale and intensity as surrounding uses; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal would permit new development providing residential uses; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the site; no historic assets are evident on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposal would not permit higher density or intensity uses; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is via two stub streets, which will be local roads when platted. Access to the site is not through areas of significantly lower intensity or density; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by car. Redevelopment of the site would create a neighborhood which is more accessible by bicycle, pedestrians and people with disabilities by improving the sidewalk network. An increase in density may improve transit in the area; Transportation Planning has approved the proposal; No direct residential access to high-speed roadways is proposed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, tree canopy will be provided on the site, with emphasis on native trees; karst features are located on the site plan and are largely avoided by the development; the site is not located in the regulatory floodplain; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed zoning district would permit an increase in the variety of housing types in the neighborhood by permitting housing on smaller lots with smaller setbacks; the proposal would support aging in place by allowing housing on smaller lots with smaller setbacks, which would reduce the price of the homes compared with nearby development; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed zoning district would permit inter-generational mixed-income development that is connected to the neighborhood and the surrounding area; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would increase the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in Louisville Metro; no existing residents will be displaced by the proposal.

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

**The vote was as follows:**

**YES: Commissioners Carlson, Daniels, Mims, Sistrunk and Lewis**  
**NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz**

**Waivers**

**1: from 5.9.2.A.1.a.ii to omit a required stub connection to an adjacent undeveloped property (21-WAIVER-0037)**

On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners as access to the site will be via two stub connections coming into the site from the north; and

**WHEREAS**, the waiver will not violate specific guidelines of Plan 2040 as the entire subdivision, as a whole, has multiple entrances; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the Kentucky Transportation Cabinet has advised that connecting to Mt. Washington Road via the

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residual lot would be infeasible due to the width of the lot and the turn radii at the corners. Stubbing to the residual lot with no feasible way to make the connection in the future would result in loss of lots with no discernable benefit to the public; and

**WHEREAS**, the Louisville Metro Planning Commission further finds 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 loss of at least one lot without generating any positive impact on the community, due to the infeasibility of the connection to Mt. Washington Road.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver from 5.9.2.A.1.a.ii to omit a required stub connection to an adjacent undeveloped property (21-WAIVER-0037).

**The vote was as follows:**

**YES: Commissioners Daniels, Mims, Sistrunk and Lewis**

**NO: Commissioner Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz**

**2: from 7.3.30.E to allow a drainage easement to overlap a rear yard by more than 15% (21-WAIVER-0038)**

On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners as the overlap between the rear yard and the drainage easement is not likely to be visible outside the property or increase drainage off the property; and

**WHEREAS**, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address overlap between required yards and drainage easements; and

**WHEREAS**, the Louisville Metro Planning Commission finds, 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 MSD generally requiring drainage easements to be in rear yards; and

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**WHEREAS**, the Louisville Metro Planning Commission further finds 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 excess rear yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver from 7.3.30.E to allow a drainage easement to overlap a rear yard by more than 15% (21-WAIVER-0038).

**The vote was as follows:**

**YES: Commissioners Carlson, Daniels, Mims, Sistrunk and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz**

**Variance from Table 5.3.1 to reduce the front and street side yard setback to 20' (required 25', requested 20', variance of 5') (21-VARIANCE-0034)**

On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the requested variance will not adversely affect public health, safety or welfare as the decrease in setback will be consistent across the development and will not impact sight lines at the corners or create adverse impacts on the public; and

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity as the subdivision is being newly created and the character of the neighborhood is not yet established; and

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public as the decrease in setback will be consistent across the development and create no hazards or nuisances; and

**WHEREAS**, the requested variance will not allow an unreasonable circumvention of zoning regulations as the variance will create a neighborhood with a consistent setback; and

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**WHEREAS**, the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the subdivision is new and the overall site is regular in shape; and

**WHEREAS**, the Louisville Metro Planning Commission finds, 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 subdivision could be built successfully without it; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no construction has yet taken place and the variance is being sought at this time.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Table 5.3.1 to reduce the front and street side yard setback to 20' (required 25', requested 20', variance of 5') (21-VARIANCE-0034).

**The vote was as follows:**

**YES: Commissioners Carlson, Daniels, Mims, Sistrunk and Lewis**  
**NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz**

**Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements**

On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, no natural resources or historic assets are evident on the site; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

**WHEREAS**, no open space requirements are pertinent to the request; and

**WHEREAS**, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in

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order to prevent drainage problems from occurring on the subject site or within the community; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the overall site design is in compliance with the Land Development Code and is compatible with existing and projected future development in the vicinity. The proposed zoning district change will not represent a significant change in density or intensity compared with the existing development in the neighborhood; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code with the exception of the requested waivers and variance.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan/Major Preliminary Subdivision, **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. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:



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- a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. 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.
  - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
6. 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.
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, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. 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.
9. 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."

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10. Open space 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.

11. All street signs shall be installed by the Developer and shall conform with 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.

12. 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.

13. 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. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.

14. 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 in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.

b. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.

c. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.

15. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.

16. 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.

17. The Developer shall construct a left-turn lane at the Parkside Vista Lane entrance on Mt. Washington Road as recommended in the traffic study, in coordination with the

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Kentucky Transportation Cabinet. The left-turn lane shall be completed prior to issuance of the first building permit on the site.

**The vote was as follows:**

**YES: Commissioners Daniels, Mims, Sistrunk and Lewis**

**NO: Commissioner Carlson**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Howard, Peterson and Seitz**