

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

Request:	Revised Major Preliminary Subdivision and Sidewalk Waiver
Project Name:	Spring Villa Section 3 and 4
Location:	6710 S. Watterson Trail
Owner:	Superior Builders, Inc.
Applicant:	Superior Builders, Inc.
Representative:	Kathy Linares and David Mindel – Mindel, Scott & Associates
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden

Case Manager: **Laura Mattingly, Planner II**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

An audio/visual recording of the Land Development and Transportation Committee meeting 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.

Agency Testimony:

00:34:00 Laura Mattingly presented the case and showed the site plan (see staff report and recording for detailed presentation.)

00:39:00 In response to a question from John Carroll, legal counsel for the Planning Commission, Ms. Mattingly said the subdivision was planned as all single-family homes.

The following spoke in favor of the request:

Brian Wacker, Superior Builders Inc., P.O. Box 91483, Louisville, KY 40291

Kathy Linares and David Mindel, Mindel, Scott & Associates, 5151 Jefferson Boulevard Suite 101, Louisville, KY 40219

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

Summary of testimony of those in favor:

00:40:53 Kathy Linares, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:56:54 David Mindel and Brian Wacker, also applicant's representatives, said they were available to answer questions. Mr. Wacker added that he is a resident in this area, and that the best area for sidewalks (to be most usable) would be on Beulah Church Road, not Watterson Trail. He said that, until the City improves Watterson Trail, there will be no connection.

00:58:06 Joe Reverman, Assistant Director with Planning and Design Services, noted that PDS was in support of this; however, the only concern at the time was the proportion of the sidewalks. He said Ms. Linares has provided more information today than previously. Mr. Mindel discussed sidewalks.

The following spoke in opposition to the request:

Theresa McCarthy (sp), 6408 and 6312 South Watterson Trail, Louisville, KY

Summary of testimony of those in opposition:

00:59:48 Theresa McCarthy (sp), an adjoining property owner, explained some of the landscape issues on the site and the surrounding area (see recording for detailed presentation.) She said she and other neighbors want the sidewalk. She discussed the night hearing that was held regarding this project, and said the developer promised that there would be no increase in units, but today the units are being increased. She discussed failures on this project, namely silt fence failures, traffic accidents, and violations of the Woodland Protection Area.

01:02:45 In response to a question from Commissioner Jarboe, Ms. McCarthy said the neighbors want the sidewalk as a start, even if it does not yet connect with anything. She explained how the sidewalk would help pedestrians on Watterson Trail, especially on the hill going up to Spring Villa. She said there is much pedestrian and bicycle traffic in this area.

01:04:06 Councilman James Peden spoke in favor of the sidewalk and in opposition to a waiver (see recording for detailed presentation.) He said apartment developments have greatly added to foot traffic in this area and wants

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

better pedestrian accessibility and connectivity. He said he did not have issues with other aspects of the waiver.

01:10:43 In response to a question from Commissioner Jarboe, Councilman Peden said his cost estimate/s for this sidewalk was approximately \$6,000 per 70 feet.

The following spoke neither for nor against:

No one spoke.

Rebuttal:

01:12:47 David Mindel discussed some of the financial history of this development, and how it has affected what is being proposed. He said all of the other residents that had previously attended the night hearing are now apparently satisfied. He discussed the WPA violation in detail – this was not the developer who did this. The people who did it were residents who did clearing. He made an argument for building sidewalks along Beulah Church Road, saying it would make for better connectivity for the whole area. An additional 100 feet of sidewalk will also be added along Manslick Road.

01:16:11 There was discussion between Ms. McCarthy, Ms. Linares, and Mr. Mindel regarding the location of sidewalk/s and/or connections. Ms. McCarthy showed the site plan to the Commissioners and where she wanted a sidewalk.

01:23:10 Councilman Peden joined the discussion and suggested a Condition of Approval (COA) regarding a sidewalk connection from Section 4 of the development (owned by Mr. Wacker) through Ms. McCarthy's properties.

01:24:45 In response to a question from Commissioner Brown, Councilman Peden discussed sidewalks along Beulah Church Road. They are connected to a property, but are not really connected to each other or to a destination.

01:28:02 Commissioner's deliberation

01:33:18 Mr. Carroll asked for clarification about what exactly was going to be done on this lot. Ms. Linares said the developer would be providing a

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

pedestrian access easement across the open space lot which would go down Brett Frazier Drive, through the open space, over to Ms. McCarthy's property, and an actual sidewalk would be constructed in that area. Mr. Carroll asked if that would be in addition to what the developer would do on Beulah Church Road. Ms. Linares said that is correct. The total length of feet of sidewalk along Beulah Church Road will be roughly 750 linear feet. She said this information was shown during her presentation.

01:36:58 Commissioner Brown suggested granting the sidewalk waiver on condition that the applicant provide the access easement and a four-foot concrete sidewalk on Lot 213 to serve the McCarthy lot, and then provide about 750 feet of five-foot sidewalk on Beulah Church Road as presented today, with the required encroachment permit from KYTC. During a discussion between Commissioner Brown and Mr. Wacker, Mr. Wacker agreed to put in a sidewalk before January 1, 2018.

Revised Major Preliminary Subdivision Plan and Sidewalk Waiver along South Watterson Trail

01:39:41 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

WHEREAS, the Louisville Metro Land Development and Transportation Committee finds that the proposed waiver conforms to the Comprehensive Plan and the intent of the Land Development Code. The waiver will not adversely affect adjacent property owners because there aren't sidewalks along Watterson Trail on either side of this subdivision for the required sidewalk to connect to and since the existing infrastructure does not allow adequate room to construct it. The provision of a sidewalk on the west side of Beulah Church to fill the gaps in the existing walk provided from the Avalon development north to Delcour Way will provide a much needed connection to allow residents in the area to access restaurants, commercial developments and services to the north with a continuous walkway; and

WHEREAS, the Committee further finds that compliance with the regulation is not appropriate as there are no sidewalks in this otherwise developed neighborhood and no way to provide given the existing location of existing infrastructure including the signature entrance walls and the roadside ditch. Nor

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

are there any nearby services that could be accessed with the provision of a walkway. The granting of the waiver is appropriate as the developer agrees to construct a sidewalk in an offsite location as requested by this area's Metro Councilman to fill a greater need for pedestrian access for a large area of residential developments to existing commercial and government uses & services on Beulah Church Road and Fegenbush Lane; and

WHEREAS, the Committee further finds that, for those in close proximity to the site there will be no negative impact, but rather a continuation of the existing conditions. For those property owners and tenants residing in the vicinity of the sidewalk that is proposed to be constructed as an alternative there will be a positive impact that will serve a larger number of people by connecting existing sidewalks to make a continuous walkway along Beulah Church Road from the Avalon development north to Delcour Way which from there sidewalks are being constructed with the state highway improvements on both Beulah Church Road and Fegenbush Lane; and

WHEREAS, the Committee further finds that strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because building an isolated sidewalk in this location, where it would not connect to any other such walkway or connect residents to goods or service and considering the fact that the existing infrastructure, impedes its construction makes building this sidewalk impractical and unreasonably expensive; and

WHEREAS, the Committee further finds that, based the applicant's justification and the evidence and testimony presented today, that all of the applicable Guidelines of Cornerstone 2020 and the Land Development Code are being met; now, therefore be it

RESOLVED, the Louisville Metro Land Development and Transportation Committee does hereby **APPROVE** the requested Revised Major Preliminary Subdivision Plan and a Sidewalk Waiver of Chapter 5.8.1. of the Land Development Code to waive the requirement for sidewalks to be constructed along S Watterson Trail adjacent to the subject site, **ON CONDITION** that the applicant shall provide an access easement and provide a four-foot concrete sidewalk on Lot 213 to serve the McCarthy lot, and then provide about 750 feet of five-foot wide concrete sidewalk on Beulah Church Road as presented today, with the required encroachment permit from KYTC, and all sidewalk work shall

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

be completed by January 1, 2018, **SUBJECT** to the following binding elements and Conditions of Approval:

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The density of the development shall not exceed **5.87** dwelling units per acre (**174** units on 29.66 acres).
3. A signature entrance may be provided at the main entrance(s) in accordance with the Land Development Code. Any freestanding signs in accordance with the parkway designation standards of the Land Development Code may be approved by Planning Commission staff.
4. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
5. The existing access point to the site is to be closed and access to the site be made from the new curb-cuts as shown on the development plan.
6. 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.
7. A Tree Preservation Plan (TPP) shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.

8. 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.
9. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection areas beyond what is outlined under Binding Element No. 10 below shall require notification of adjoining property owners and LD& T action.
10. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:
 - A. Woodland Protection Areas (WPAs) identified on this plan represent portions of the site that shall permanently preserve all existing vegetation within them. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat, except for work required in utility easements by the appropriate public utility.
 - B. Dimension lines have been used on this plan to establish the general location of WPAs and represent the minimum boundary of the designated WPAs. The final boundary for each WPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

line.

C. Tree protection fencing shall be erected around all WPAs prior to Site Disturbance Approval to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. D. No parking, material storage or construction activities are permitted within the WPAs.

11. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
12. If a building permit is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
13. 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.
14. 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,

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

shall be responsible for compliance with these binding elements.

15. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
16. All improvements along Watterson Trail as required by Jefferson County Public Works and Transportation shall be completed prior to the applicant requesting a certificate of occupancy.
17. Street lights shall be of the typical kind supplied by LG&E for residential subdivisions. All other types of lighting shall be directed down and away from surrounding single-family residential properties.
18. A mixture of evergreen and deciduous trees shall be provided along the perimeter of the site to supplement the existing vegetation to be preserved. Evergreen trees spaced 15 feet on center shall be planted along the perimeter where the proposed development is in close proximity to existing residences and as shown on the rendered concept plan presented at the March 21, 2002 public hearing.
19. The subject property frontage along Watterson Trail shall include landscaping treatments, including variable berm, four-board horse fence and trees, as depicted on the colored site plan and rendering presented at the public hearing on March 21, 2002.
20. Street trees shall be planted throughout the condominium community in accordance with the colored site plan presented at the public hearing on March, 21, 2002.
21. The property owner/developer shall construct buildings that are substantially all brick, except for minor accent treatments of other building materials. Buildings shall look substantially similar to renderings and floor plans introduced at the public hearing on March 21, 2002
22. No building that contains a walkout basement shall exceed one-story in height.
23. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded within one year of approval of this rezoning case number 13ZONE1 015. The

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

May 25, 2017

New Business

Case No. 17SUBDIV1006

property lines will be substantially the same as shown on the Preliminary Subdivision Plan, plus or minus 5 feet.

The vote was as follows:

YES: Commissioners Brown, Carlson, Jarboe.

NO: No one.

NOT PRESENT: Commissioners Peterson and Lewis.

ABSTAINING: No one.