

PLANNING COMMISSION

February 16, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0013

Request: Change in Form District from SWFD to NFD, Change in Zoning from EZ-1 to R-6 and R-7, with Associated General District Development Plan with Binding Elements, Detailed District Development Plan with Binding Elements, Major Preliminary Subdivision and Variances

Project Name: 3500 Lees Lane Rezoning
Location: 3500 Lees Lane
Owner: LDG Land Holdings, LLC
Applicant: LDG
Representative: Dinsmore & Shohl
Jurisdiction: Louisville Metro
Council District: 1 – Tammy Hawkins
Case Manager: Dante St. Germain, AICP, 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 Planning Commission meeting. (The Staff Report is part of the case file maintained in Planning and Design Services offices, 444 South 5th Street.)

Agency Testimony:

00:41:22 Dante St. Germain presented the applicant's proposal to create 312 residential units.

00:50:11 Commissioner Brown requested to see the plan. Dante St. Germain acquiesced.

00:50:55 Laura Ferguson clarified if the plan has changed. Dante St. Germain agreed that the Limits of Disturbance are different.

The Following Spoke in Support of the Request:

Cliff Ashburner, 101 South 5th Street, Suite 2500, Louisville, KY 40202
Derek Triplett, 503 Washburn Avenue, Louisville, KY 40222
Dianne Zimmerman, 12803 High Meadows Pike, Prospect, KY 40059

Summary of Testimony of Those in Support:

00:53:11 Cliff Ashburner disagreed with the findings. Ashburner advocated for approval of the proposal.

00:58:43 Derek Triplett elaborated on the plan for apartments and a clubhouse.

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01:06:18 Dianne Zimmerman introduced the TIS conducted on the intersections of Ladd Avenue and Lees Lane and Cane Run Road and Lees Lane.

01:07:39 Cliff Ashburner acknowledged that the plan has changed to mitigate the wetlands.

01:22:44 Commissioner Carlson suggested a fence to discourage railroad crossing.

01:24:00 Commissioner Carlson requested the need for a signal on Ladd Avenue and Lees Lane. Dianne Zimmerman disagreed. Zimmerman confirmed that the findings from the TIS do not necessitate one.

01:27:15 Commissioner Carlson suggested a Binding Element for affordable housing. Cliff Ashburner acknowledged that he will need to see the language.

01:28:14 Commissioner Brown asked what will happen to the sidewalk when Lot 4 is proposed. Derek Triplett advocated for the provision of a right-of-way and sidewalk.

The Following Spoke in Opposition to the Request:

Earl Hartlage, 4201 Bramers Lane, Louisville, KY 40216

Summary of Testimony of Those in Opposition:

01:31:27 Earl Hartlage disagreed with the proposal due to no bus stop or shopping.

The Following Spoke Neither for nor Against:

Tammy Hawkins, 4211 Lake Dreamland Road, Louisville, KY 40216

Summary of Testimony of Those Neither for nor Against:

01:42:22 Tammy Hawkins introduced herself as a Council Woman for District 1. Hawkins acknowledged that there is not enough dialogue from LDG.

Rebuttal:

01:45:24 Cliff Ashburner apologized to Tammy Hawkins. Ashburner disagreed with Earl Hartlage. He elaborated that there is a bus stop and an adjacent school, as well as industrial jobs. Cliff Ashburner confirmed the need for affordable housing.

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01:53:07 Commissioner Carlson clarified if a fence is needed. Cliff Ashburner acknowledged a wooded area as a reason for disagreeing.

01:56:35 Cliff Ashburner brought up the Binding Element for affordable housing. Ashburner disagreed with the language. Laura Ferguson agreed. Ferguson elaborated that the Binding Element is not applicable.

Deliberation:

02:04:11 Commissioner Cheek advocated for approval of the proposal.

02:05:04 Commissioner Pennix questioned the TIS.

02:06:39 Commissioner Sistrunk disagreed with a designated commercial area.

02:07:49 Commissioner Carlson requested Commissioner Brown's estimation on the TIS. Commissioner Brown acknowledged that KYTC is making changes to the area that he agrees with.

An audio/visual recording of the Planning Commission 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.

Change in Form District from Suburban Work Place Form District to Neighborhood Form District

02:09:09 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Change in Form District from Suburban Work Place Form District to Neighborhood Form District.

The Vote Was as Follows:

YES: Commissioner Brown, Carlson, Cheek, Pennix, Sistrunk, and Lewis

ABSENT: Commissioners Clare, Fischer, Howard, and Mims

Change in Zoning from EZ-1 Enterprise Zone to R-6 Multi-Family Residential and R-7 Multi-Family Residential

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02:09:44 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Change in Zoning from EZ-1 Enterprise Zone to R-6 Multi-Family Residential and R-7 Multi-Family Residential.

The Vote Was as Follows:

YES: Commissioner Brown, Carlson, Cheek, Pennix, Sistrunk, and Lewis
ABSENT: Commissioners Clare, Fischer, Howard, and Mims

Variance #1: Variance from Table 5.3.1 to Permit Structures to Exceed the Maximum Allowed Building Height of 35' (Required: 35', Requested: 38', Variance of 3') (22-VARIANCE-0171)

Variance #2: Variance from Table 4.8.5 to Permit Encroachment into Required 25' Wet Lands Buffers (22-VARIANCE-0172)

02:10:17 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

(Variance #1) WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not adversely affect public health, safety or welfare as the increase in building height will not affect sight lines or provide any other public health, safety or welfare issues; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not alter the essential character of the general vicinity as the Variance requested is relatively small and unlikely to be apparent to the public; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not cause a hazard or nuisance to the public as the increase in height is relatively small and unlikely to be visible to the public; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not allow an unreasonable circumvention of zoning regulations as the requested Variance is relatively small and is needed to provide an extra foot of interior height for each floor to provide higher ceilings; and

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WHEREAS, the Louisville Metro Planning Commission finds 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 Variance is needed for a design choice on the part of the developer and not due to unique characteristics of the lot; 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 building height is a design choice to improve the look of the interior rooms and the buildings could be shorter with more standard ceiling heights without depriving the applicant of the use of the land or creating an unnecessary hardship; and

WHEREAS, the Louisville Metro Planning Commission 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; and

(Variance #2) WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not adversely affect public health, safety or welfare as the encroachment will not affect sight lines or provide any other public health, safety or welfare issues; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not alter the essential character of the general vicinity as the general vicinity is an undeveloped lot; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will not cause a hazard or nuisance to the public as the encroachment is unlikely to be visible to the public; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance will allow an unreasonable circumvention of zoning regulations as the wetlands are jurisdictional. Jurisdictional wetlands are protected by the Land Development Code because they are a limited natural resource and environmental constraint which is difficult to replace once disturbed; and

WHEREAS, the Louisville Metro Planning Commission finds the requested Variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is undeveloped in an area of generally developed land; and

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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 overall site is large and the preservation of the wetlands would only require that the development be moved to another portion of the site which is not environmentally constrained; and

WHEREAS, the Louisville Metro Planning Commission 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, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Variance #1** from Table 5.3.1 to Permit Structures to Exceed the Maximum Allowed Building Height of 35' (22-VARIANCE-0171) and **Variance #2** from Table 4.8.5 to Permit Encroachment into Required 25' Wet Lands Buffers (22-VARIANCE-0172).

The Vote Was as Follows:

YES: Commissioner Brown, Carlson, Cheek, Pennix, Sistrunk, and Lewis
ABSENT: Commissioners Clare, Fischer, Howard, and Mims

Major Preliminary Subdivision

02:11:19 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Major Preliminary Subdivision.

The Vote Was as Follows:

YES: Commissioner Brown, Carlson, Cheek, Pennix, Sistrunk, and Lewis
ABSENT: Commissioners Clare, Fischer, Howard, and Mims

General District Development Plan and Binding Elements

02:11:49 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds the site is fully wooded and features both jurisdictional and non-jurisdictional wetlands. Required tree canopy will be provided; and

WHEREAS, the Louisville Metro Planning Commission finds provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided, and Metro Public Works has approved the Preliminary General Development Plan; and

WHEREAS, the Louisville Metro Planning Commission finds open space will be provided in compliance with the requirements of the Land Development Code; and

WHEREAS, the Louisville Metro Planning Commission finds 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 Louisville Metro Planning Commission finds the overall site design will be compatible with existing and planned future development in the area. The proposal would provide lots which can be later developed with housing, which is in conformance with the existing development in the area; and

WHEREAS, the Louisville Metro Planning Commission finds the General Development Plan conforms to applicable requirements of the Land Development Code, and with applicable guidelines and policies of Plan 2040.

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested General District Development Plan with Binding Elements, **SUBJECT** to the following Binding Elements:

1. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a Detailed District Development Plan in accordance with chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional Binding Elements.
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

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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. 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. Tree Canopy Credit Areas (TCCAs) as shown on the General Development Plan shall not be developed in any manner.
7. The sidewalk along Lees Lane shall be expanded to 10 feet to accommodate the Louisville Loop as the other lots develop.
8. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
9. All street name signs shall be installed prior to requesting a Certificate of Occupancy for any structure. The address number shall be displayed on a structure prior to requesting a Certificate of Occupancy for that structure.
10. 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."
11. 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.
12. 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.

The Vote Was as Follows:

YES: Commissioner Brown, Carlson, Cheek, Pennix, Sistrunk, and Lewis

ABSENT: Commissioners Clare, Fischer, Howard, and Mims

Detailed District Development Plan with Binding Elements

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02:12:20 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds the site is fully wooded and features jurisdictional wetlands. Required tree canopy will be provided elsewhere in the general plan on the overall site. The wetlands are likely to be disturbed by construction and later resident activity; and

WHEREAS, the Louisville Metro Planning Commission finds 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, the Louisville Metro Planning Commission finds open space is being provided in compliance with the requirements of the Land Development Code. Much of the open space is located over jurisdictional wetlands; and

WHEREAS, the Louisville Metro Planning Commission finds 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 Louisville Metro Planning Commission finds the overall site design is compatible with existing and planned future development in the area. The proposal would provide housing in conformance with the existing development in the area; and

WHEREAS, the Louisville Metro Planning Commission finds the development plan conforms to applicable requirements of the Land Development Code. It does not comply with applicable guidelines and policies of Plan 2040 as environmental assets on the site are likely to be impacted. Jurisdictional wetlands are required to have a 25' buffer area, which is proposed to be varied. Community Form Goal 3, Policy 8 encourages development plans to conserve, restore and protect vital natural resource systems such as mature trees, steep slopes, streams and wetlands. Community Form Goal 3, Objective A states that environmental impacts of development are diminished. The development plan does not diminish the environmental impact of development, but instead seeks to maximize the development potential of the site at the expense of environmentally sensitive wetlands. Community Form Goal 3, Objective B states that environmentally sensitive areas are preserved and/or enhanced. The development plan does not preserve or enhance environmentally sensitive wetlands on the site.

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan with Binding Elements, **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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work done in the Lees Lane right-of-way.
 - 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 Certificate of Occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with chapter 10 of the Land Development Code shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 16, 2023 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. 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.

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6. 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.

The Vote Was as Follows:

YES: Commissioner Brown, Carlson, Cheek, Pennix, Sistrunk, and Lewis

ABSENT: Commissioners Clare, Fischer, Howard, and Mims