

PLANNING COMMISSION MINUTES
November 6, 2017

PUBLIC HEARING

CASE NO. 17ZONE1025

Request: Change in Zoning from R-4, Single Family, to C-N, Commercial-Neighborhood, and Conditional Use Permit from Section 4.2.38 for Nursing Homes and Homes for the Infirm or Aged

Project Name: Artis Senior Living
Location: 4922 Brownsboro Road
Owner: Kinman Compound, LLC
Applicant: Artis Senior Living, LLC
Representative: Bardenwerper, Talbott, & Roberts, PLLC
Jurisdiction: Louisville Metro
Council District: 7 – Angela Leet
Case Manager: Laura Mattingly, 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:

00:10:22 Ms. Mattingly discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2nd floor, Louisville, Ky. 40223

Kevin Young, Land Design and Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222

Bill Kinman, 1915 Warrington Way, Louisville, Ky. 40222

Robert Knabel, 1917 Warrington Way, Louisville, Ky. 40222

John Hicks, 4924 Granthad Place, Louisville, Ky. 40222

Kirk Hilbrecht, 1900 Crossgate Lane, Louisville, Ky. 40222

Diane Zimmerman, 12803 High Meadows, Prospect, Ky. 40059

Summary of testimony of those in favor:

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00:18:36 Mr. Talbott gave a power point presentation. There are a lot of commercial activities nearby. Neighbors objected to the original plan so there have been a lot of changes. Some existing trees will be kept for buffering. There is a proposed gate at Warrington Way for emergency access.

00:32:11 Mr. Young stated the proposal is broken down into 2 tracts. The senior living facility will be one-story and a park-like setting to blend in with the neighborhood. There will be fencing with sidewalks on all frontage. Everything will drain to Brownsboro Rd.

00:36:57 Mr. Talbott spoke about the materials (very durable). The building will complement the neighborhood. Most deliveries will be made through a small door on the side of the building. There will be minimal traffic impact. Also, there's one proposed additional binding element to make the gate compliant.

00:47:37 Mr. Kinman gave some history on the property. "I have some really good connections with the city of Crossgate".

00:52:35 Mr. Knabel stated he has a lot of pride in the homes and community they built. The proposal seems to have minimal impact and should be a nice facility.

00:56:48 Mr. Hicks said he is in support of the proposal but still has a concern about the traffic.

01:30:05 Mr. Hicks stated the emergency gate is only to be used if the main entrance is blocked.

00:58:46 Mr. Hilbrecht is the mayor of Crossgate. He stated he doesn't want traffic cutting through their neighborhood.

01:13:12 Ms. Zimmerman stated, "I've done 2 versions of this traffic study, the original version because there was access to Warrington Way. I don't anticipate very many people from the Artis facility using Warrington Way and I don't know why anyone would come coming out of the bank would choose to loop back and come out to Warrington Way."

The following spoke in opposition to this request:

Irene Yeager, 1802 Grantham Court, Crossgate, Ky. 40222

Kris Christensen, 1911 Crossgate Lane, Louisville, Ky. 40222

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Summary of testimony of those in opposition:

01:30:55 Ms. Yeager is concerned about the increased traffic. It's already rated D and F. The property values are decreasing because of the traffic. Drainage will be worse with more concrete and less green. Also, the property (land) is historic on either side of the Watterson expressway.

01:34:38 Ms. Christensen said she has lived there for 3.5 years and chose Crossgate because it's an enclave. The green space is utilized by her 4 children. "Our appraiser let us know that having this across the street from our house would negatively impact the value of our home."

Ms. Christensen stated she has experienced senior facilities in the past and there are always cars, lights, shift changes and ambulances.

The following spoke neither for nor against the request:

James Gerrish, 1806 Grantham Court, Louisville, Ky. 40222

Summary of testimony of those neither for nor against:

01:03:50 Mr. Gerrish, commissioner of Crossgate, said he's in favor of the development but concerned about traffic turning left into oncoming traffic of Crossgate (high rates of speed).

01:08:32 Commissioner Brown stated he doesn't know if he can support the emergency gate with the Lyndon Fire Dept. being against it.

Rebuttal

01:40:41 Mr. Talbott stated the neighbors complaining about traffic is the existing traffic, not traffic the proposal will bring to the area. There will be 16 people working per shift and the shifts have been designed to not be at peak hours. The bank is up front across from another commercial use. There are only 2 here tonight speaking against the proposal and that speaks volumes to the city as a whole, being in favor of it. Please adopt the proposed finding of facts as part of the record.

Deliberation

01:45:37 Commissioner Carlson stated the proposal complies with the Comprehensive Land Use Plan. The bank and senior living facility are neighborhood

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serving uses. "The gate gives people a sense of security and cut-through is what everybody does. I'd rather not have a gate."

01:47:33 Commissioner Brown stated the change in zoning and conditional use permit are appropriate for the area. "I support the variance and connectivity, in which there is a lack of in this community."

01:48:29 Vice Chair Lewis remarked, "I applaud the level of cooperation between all the parties involved. There's obviously been a lot of conversations and compromise back and forth to get us where we're at today." The gate is not necessary and I'm concerned that the fire department doesn't support it.

01:49:26 Commissioner Peterson stated there needs to be a binding element for the TARC stop. "I would like to see the gate retained." The children playing on the lot was not going to happen forever, as it would be developed someday. This proposal does not add to the current traffic issues.

01:52:25 Commissioner Ferguson remarked, "I'm impressed with the level of continued work/cooperation and how this has evolved over the different forms of the plans over time. It thought that was significant." Everything is appropriate and in order. I'm o.k. with the gate.

01:53:53 Chair Jarboe agrees with the other commissioners regarding the zoning change and conditional use permit. Compromise has been very effective as well.

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 C-N

On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

WHEREAS, the proposal has both senior living and commercial proposed and appears to be at a scale that is compatible with nearby residential as well as higher intensity uses along Brownsboro Road; and

WHEREAS, the proposal is a higher intensity use than the single family homes that are adjacent but is located on a minor arterial, where primary access is given; and

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WHEREAS, the Louisville Metro Planning Commission finds, the proposal includes new construction that provides both commercial and senior living; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed retail is located in a medium density area with nearby access to expressways.

WHEREAS, the application complies with the Suburban Neighborhood Form District description of an area characterized by predominantly residential uses but that also includes, at appropriate locations, a mixture of uses, such as offices, retail shops, restaurants and services so long as these uses are at a scale appropriate for the nearby neighborhoods. This mixed use branch bank/CN level retail/office/senior living development ("development") is precisely what is contemplated by the Suburban Neighborhood Form District with respect to uses other than low to medium density residential; and

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14 and 15 of this Guideline as follows.

The subject property adjoins the mixture of commercial and single-family residential uses mentioned above, placing it in or adding it to the activity center that already exists in and around this location. With goods and services already available along Brownsboro Road, including within the Kroger anchored Holiday Manor shopping center across Brownsboro Road, this development makes excellent use of this unusually large single family property. As part of an existing or addition to an "activity center", this development is appropriately located along a minor arterial road very close to US 42, a major arterial road, and it is designed to be of intensity, density, size and mix of uses appropriate for this location at the front door of the small city of Crossgate; and

WHEREAS, this location is now considered an infill site where road, sewer and drainage infrastructure already exist. The senior living facility component of this development brings to this area an enhanced level of elder care where an existing support population already exists. The development as a whole is clearly compact, with the mixture of uses above mentioned, all compatible with this development's residential neighbors. To some extent parking is shared, while access is fully shared.

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24 and 28 of this Guideline as follows.

As set forth above, this development will have an attractive look and feel, constructed of building materials and of a height and scale compatible with the style, design and scale of nearby residential properties. It will be newer and more upscale than the older commercial development across from Brownsboro Road from this site. There will be no odor or noise nuisances that would potentially emanate from the development because

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of the limited CN uses on the front and senior living facility in the rear of this site. Lighting will follow restrictions of the Land Development Code (LDC) and thus be directed down and away from nearby residential properties, with 90 degree cut-off at property lines. Transitions to adjoining residential properties will be intensively and attractively screened with landscaping. Loading and delivery will be located and/or screened so as to minimize impacts on nearby residential properties. Signage will be in conformance with the LDC. The senior living facility adds to the variety of housing needed in a community to serve a growing aging population, unfortunately increasingly dementia afflicted; and

WHEREAS, the application complies with the Intents and applicable Policies 2, 5, 6 and 11 of this Guideline as follows.

As set forth above, this property is located along Brownsboro Road and close to US Hwy 42, both of which are minor/major arterials. That places this development in close proximity to the population it intends to serve with elder care services, branch banking and neighborhood compatible retail or office. That reduces public and private costs for land development, reduces travel times and distances and ensures adaptive reuse of an extra-large single family lot in a manner that well serves the existing city of Crossgate, other nearby residential neighborhoods and the traveling public along Brownsboro Road and US 42; and

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16 and 18 of Guideline 7; Policies 1, 4, 5, 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 as follows.

Traffic utilizing this development will have access off of Brownsboro Road, with only emergency access off one of the small city of Crossgate city streets, that being Warrington Way. That appears to be the preference of City of Crossgate officials and residents. The design of this development, together with its points of access, take into account the standards promulgated by KTC and Metro Transportation Planning and Public Works. The latter will be required to review the detailed district development plan (DDDP) submitted with this application prior to time of LD&T and Planning Commission public reviews, or this application will not be publicly heard. That review and preliminary stamp of approval will assure that Transportation Planning and Public Works standards for corner clearances, access, connectivity, internal circulation and parking minimums are all satisfied. Bike racks and sidewalks will be provided as required; and

WHEREAS, the application complies with the Intents and applicable Policies 1, 3, 6, 7, 10 and 11 of this Guideline as follows.

Storm water drainage will be routed to on-site catch basins and there directed to on-side detention basins and from there into the existing storm water system. MSD will be required to review the storm water management plan and give its preliminary stamp of

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approval to the DDDP prior to docketing for LD&T and Planning Commission public reviews; and

WHEREAS, the application complies with the Intents and applicable Policies 3, 5 and 8 of this Guideline as follows: MSD has promulgated both soil erosion/sedimentation control regulations and even newer ones with respect to water quality. Construction plans for this development will require compliance with these regulations prior to obtaining building permits; and

WHEREAS, the Louisville Metro Planning Commission finds, the application complies with the Intents and applicable Policies 2, 4, 7 and 8 of this Guideline as follows. This proposed development is located in close proximity to a large residential support population, notably along Brownsboro Road. This will help vehicle miles traveled because more branch banking, neighborhood retail and senior care services will be located in close proximity thereto; and

WHEREAS, the Louisville Metro Planning Commission further finds the application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline as follows.

Compliance with this Guideline is achieved by virtue of compliance with LDC requirements. But as stated above, landscaping, screening and buffering will exceed LDC requirements, as promised neighbors at the neighborhood meeting.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the Change in Zoning from R-4, Single Family Residential, to C-N, Commercial Neighborhood, on property described in the attached legal description, which shall be updated to include the access road, be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Lewis, Peterson and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Howard, Lindsey, Smith and Tomes

Conditional Use Permit

On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

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WHEREAS, the proposal for a senior living facility does generally comply with the applicable Guidelines within Cornerstone 2020, as detailed in the Comprehensive Plan checklist; and

WHEREAS, the proposed senior living facility appears to be at a scale appropriate with the surrounding residential area, and will seemingly have limited impact on adjacent and nearby residential uses. The proposal provides appropriate transitions to adjacent residential uses through the use of landscape buffer yards, setbacks and screening. The proposed building is one-story and will contain brick on the areas that are not within the proposed privacy fence. Therefore, the proposal is compatible with surrounding uses and the general character of the area; and

WHEREAS, the Louisville Metro Planning Commission finds, Improvements to the site and right-of-way made necessary by the proposed development, such as transportation and drainage, have been adequately provided to serve the proposed use; and

WHEREAS, the Louisville Metro Planning Commission further finds all structures, with the exception of the uncovered porches, and vehicle use area within the area of the conditional use permit are setback 30 feet from the property line. All signage within the Conditional Use Area will comply with the signage regulation for senior living. The applicant has provided all required setbacks and buffers, as well as concessions to the neighborhood on access and would be willing to discuss any further mitigation efforts the Commission deems necessary.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Conditional Use Permit to allow a Nursing Home and Home for the Infirm or Aged.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Lewis, Peterson and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Howard, Lindsey, Smith and Tomes

Variance from Table 5.3.2 within Section 5.3.1 to allow the maximum front setback to be exceeded for the proposed buildings on Tracts 1 & 2

On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

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WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the location of the buildings has no impact on the public right of way or any public space; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the proposed setbacks are more similar to the existing structure's setback than what the regulations allow; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the buildings will be buffered where they are adjacent to residential and along roadways; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the setbacks are compatible with the existing conditions of the area; and

WHEREAS, the size and shape of the lot result in circumstances that make it difficult to meet the setback requirements; and

WHEREAS, the Louisville Metro Planning Commission finds, the desired parking lot locations could not be achieved while adhering to the setbacks regulations; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought.

WHEREAS, the setback variance for these three buildings will not adversely affect the public health, safety or welfare because this is an aesthetic/compatibility issue, and the location of these buildings has no discernable public health, safety or public welfare impacts, positive or negative; and

WHEREAS, the setback variance for these three buildings will not alter the essential character of the general vicinity because other buildings along this stretch of road are similarly set back; and

WHEREAS, the setback variance for these three buildings will not cause a hazard or a nuisance to the public because their locations are not hazard or nuisance issues, but rather aesthetic and compatibility ones; and

WHEREAS, the setback variance for these three buildings will not allow an unreasonable circumvention of the requirements of the zoning regulations because, as

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stated, other buildings along this stretch of Brownsboro Road/KY 22 are similarly set back; and

WHEREAS, the setback variance for these three buildings arises from special circumstances, which do not generally apply to land in the general vicinity because the two front buildings (proposed branch bank and small retail/office building) need room for front access parking, whereas the rear senior care building will only have frontage wide enough for an access road, thus it would impossible to fit all three buildings within the required setback; and

WHEREAS, the Louisville Metro Planning Commission finds, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the senior care building could not be located here at all with this setback requirement, and the two front buildings (proposed for branch bank and small retail/office building) would end up with inconvenient/impractical/unused rear door access; 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 regulation but rather are the result of the practical way that buildings in the Suburban Neighborhood Form District are accessed for convenience and safety reasons.

Development Plan and Binding Elements

WHEREAS, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site and the proposal includes preserving all trees located on the east side of the lot adjacent to Crossgate Lane; 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the applicant is preserving the open space located on the northeast side of the lot; 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 order to prevent drainage problems from occurring on the subject site or within the community; and

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WHEREAS, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan generally conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from table 5.3.2 of the Land Development Code to exceed the maximum front yard setback of 80 ft. for the proposed building on tract 1, for a total of 395 ft., a 315 ft. variance and a Variance from table 5.3.2 of the Land Development Code to exceed the maximum front yard setback of 80 ft. for the proposed building on tract 2, for a total of 115 ft., a 35 ft. variance; and the Detailed District Development Plan subject to the following Binding Elements, and **ON CONDITION** that the plan is updated to reflect the access road to be zoned C-N, and to add a 5 X 12 ft. transit boarding pad on Brownsboro Rd. near Crossgate Ln.

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:

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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 Department of Transportation, Bureau of Highways.
 - 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.
 - d. A minor plat or legal instrument shall be recorded dedicating right-of-way as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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.
 6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
 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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 6, 2017 Planning Commission meeting.

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9. The Owner/Developer will coordinate with the appropriate emergency response agencies to ensure design and operation of gated entrances complies with emergency access gate requirements.
10. The owner/developer will construct a 5X12 foot wide boarding area on Brownsboro Rd.at Crossgate between the sidewalk curve/edge of pavement and install upon it a bench and trash receptacle. The owner/developer will maintain the transit stop and empty the trash receptacle on an as needed basis.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Lewis, Peterson and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Howard, Lindsey, Smith and Tomes