

PLANNING COMMISSION MINUTES
November 4, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0044

Request: Change in zoning from R-4 to R-5, with Detailed District Development Plan/Major Preliminary Subdivision and Binding Elements, and Waiver

Project Name: Leisure Lane Subdivision

Location: 6406 Leisure Lane

Owner: Leisure Development LLC

Applicant: Leisure Development LLC

Representative: Mindel Scott & Associates

Jurisdiction: Louisville Metro

Council District: 23 - James Peden

Case Manager: Dante St. Germain, AICP, Planner II

Notices of this public hearing were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:29:31 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

01:34:52 In response to a question from Commissioner Mims, Ms. St. Germain discussed the conversation at LD&T regarding jurisdictional vs. non-jurisdictional wetlands (see recording.)

The following spoke in support of the request:

Kathy Linares, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Summary of testimony of those in support:

01:36:30 Kathy Linares, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

01:43:41 In response to a question from Commissioner Mims, Ms. St. Germain said there is no connection to the open property to the west because that is a dedicated

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open space in another subdivision. It cannot ever be developed; therefore it was determined that no access was required.

01:44:28 In response to a question from Commissioner Clare, Ms. St. Germain reiterated that the open space belongs to a different subdivision and is not something residents in this new subdivision would be entitled to use. There are no plans for pedestrian access.

01:45:04 Commissioner Carlson referred to a letter from the adjacent homeowner's association regarding a request for a traffic study for Cooper Chapel / Leisure Lane. Commissioner Brown said this may be something that Louisville Metro could consider in the future, but that this development would not warrant it.

01:46:11 Referencing the same letter, Commissioner Carlson also noted that drainage concerns would be addressed by MSD; also, size and types of homes. Ms. Linares said she did not have information on the exact sizes of the homes, but the designs are based on those in nearby Douglass Hills. They should be compatible as far as size and styles.

The following spoke in opposition to the request:

No one spoke.

Rebuttal:

01:48:40 Ms. Linares summarized the case (see recording.)

Deliberation:

01:49:38 Commissioners' 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

01:52:57 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and staff analysis and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the proposal is not for higher density or intensity use, and the proposal is not substantially different in scale or intensity or density compared with the development around it; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the proposal would permit new development providing residential uses; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no severe, steep or unstable slopes are evident on the site. Hydric soils and non- jurisdictional wetlands are located on the site and are not proposed to be preserved; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because no distinctive cultural features are evident on the site, and the existing structure on the site is eligible for the National Register of Historic Places. The proposal is to preserve this structure; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the proposal is not for higher density or intensity zoning; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the development is through areas of similar intensity and density; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by car and bicycle. It is not accessible by transit. Accessibility by pedestrians and people with disabilities will be improved by the Louisville Loop passing through the vicinity; Transportation Planning has approved the proposal; and no direct residential access to high speed roadways is proposed; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because The site is largely cleared at this time and tree canopy will be provided with the development; no karst terrain is evident on the site; and the site is not located in the regulatory floodplain; and

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WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would increase the variety of housing in the neighborhood. The proposal would support aging in place by providing smaller, lower-cost homes in an established neighborhood, thereby increasing housing choice for persons who may wish to remain in the neighborhood as they age; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposed zoning district would permit inter-generational mixed-income development. The site is connected to the neighborhood and the surrounding area, and the site is not located in proximity to a multi-modal transportation corridor or within proximity to amenities providing neighborhood goods and services; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in the neighborhood, and within Louisville Metro; no existing residents would be displaced by the proposal; and the proposal would not permit innovative methods of housing; now, therefore be it

RESOLVED that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4 Single Family Residential to R-5 Single Family Residential be **APPROVED**.

The vote was as follows:

YES: Commissioners Seitz, Carlson, Howard, Clare, Brown, Mims, and Lewis.

ABSENT: Commissioners Peterson, Daniels, and Sistrunk.

Waiver

01:54:02 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and staff analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the 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

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WHEREAS, the Commission further finds that 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 Commission further finds that 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

WHEREAS, the Commission further finds that 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; now, therefore be it

RESOLVED that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from Section 7.3.30.E to allow a drainage easement to overlap rear yards by more than 15% (21-WAIVER-0060).

The vote was as follows:

YES: Commissioners Seitz, Carlson, Howard, Clare, Brown, Mims, and Lewis.
ABSENT: Commissioners Peterson, Daniels, and Sistrunk.

Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements

01:55:05 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and staff analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is lightly wooded and few natural resources exist on the site currently. Required tree canopy will be provided. The existing pond on the site will be preserved. Non- jurisdictional wetlands will not be preserved; and

WHEREAS, the Commission further finds that 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

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WHEREAS, the Commission further finds that no open space requirements are pertinent to the request; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design is in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the neighborhood by permitting houses on smaller lots than is prevalent in the vicinity; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040 with the exception of the requested waiver; now, therefore be it

RESOLVED that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements, **SUBJECT** to the following binding elements:

1. 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.
2. 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.
3. 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.

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4. 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 filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of trees and fences within buffer areas and other issues required by these binding elements / conditions of approval.
 - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
5. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
6. 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.
7. A note shall be placed on the preliminary plan, construction plan(s) and the record plat that states, "Construction fencing shall be erected to protect trees on site and 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 areas."
8. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).

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- b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
9. 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.
10. 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.
11. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
12. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
13. 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.
14. 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.

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15. 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.

The vote was as follows:

YES: Commissioners Seitz, Carlson, Howard, Clare, Brown, Mims, and Lewis.
ABSENT: Commissioners Peterson, Daniels, and Sistrunk.