

**PLANNING COMMISSION MINUTES**  
**December 5, 2019**

**PUBLIC HEARING**

**CASE NO. 19-ZONE-0028**

Request: Change in zoning from R-4, single-family to R-7, multi-family with detailed plan  
Project Name: Commerce Crossing Apartments  
Location: 9711 Cooper Church Drive  
Owner: James S and Jeanette Conder  
Applicant: Capstone Realty, Inc.  
Representative: Dinsmore & Shohl, LLP  
Jurisdiction: Louisville Metro  
Council District: 24 – Madonna Flood  
Case Manager: **Joel P. Dock, AICP, Planner II**

**NOTE: Commissioner Carlson left and did not vote on this case.**

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:**

02:47:14 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report. Commissioner Brown asked if the off-site location would be handled as a binding element. Mr. Dock said through the record plat and construction plan phasing. Ms. Stuber said it would need to be a binding element or on the preliminary plan because she will not read these minutes. Mr. Dock said it should read: Sidewalks will be provided at an alternative location and in accordance with Ordinance 85, Series 2019.

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

Cliff Ashburner, Dinsmore and Shohl, 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, Ky. 40202

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

02:53:49 Mr. Ashburner gave a power point presentation.

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Mr. Ashburner stated, with regard to the sidewalk issue, we have discussed multiple locations for off-site sidewalk improvements. The agreement was for the Preston and Interchange improvements which includes corner improvements allowing people to get from Interchange to a bus stop closer to Preston. The exit ramp is the reason a noise study had to be performed but indicates no mitigation is required for the buildings.

#### Deliberation

02:59:16 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-7

On a motion by Commissioner Brown, seconded by Commissioner Howard, 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 proposed district is located adjacent to major roadways and within close proximity to commercial and employment centers. The site is located along TARC express route 45x; the subject property lies within 250 feet on an interstate off-ramp. A noise study has been provided and potential impacts, if any, will be mitigated as needed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed district encourages residential use; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the site does not appear to possess any issues related to wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the site does not appear to contain distinctive cultural features; the site does not contain sites that are listed on the national register; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed district is located near a marketplace district and future and current employment centers to support transit-oriented development and an efficient public transportation system; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the proposed district is adjacent to similar densities, as well as a religious institution. Access to the site would create a limited impact on a small remainder of lower density properties; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, per ordinance 85, series 2019 sidewalks will be provided off-site to improve mobility for the community at-large; no access to high speed roadways is provided. Access is provide via local access road opposite the site from Preston Highway; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the proposal is located in an area served by existing utilities or planned for utilities as evidenced by adjacent development; the proposal would appear to have access to an adequate supply of potable water and water for fire-fighting purposes as evidenced by adjacent development; preliminary approval has been received from MSD; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, tree canopy should be preserved where possible and the minimum for tree canopy will be met; the site does not appear to present karst features that prevent or hinder development of the site; the development site is not located in the floodplain; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed district encourages a variety of housing types that are reflective of the need for missing middle and affordable housing in the Louisville area; the proposed district as a whole promotes options to allow for aging in place. The location of the development presents itself as a more appropriate location for workforce housing; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal district supports intergenerational and mixed-income development that is connected to nearby employment centers; the subject site is located near major employment centers and

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commercial goods and services providers. It is located along TARC express route 45x; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed district encourages fair and affordable housing by allowing a variety of ownership options and unit costs throughout Louisville Metro. The district expands opportunities for people to live in quality, variably priced housing in locations of their choice by enabling the provision of affordable and accessible housing in dispersed locations throughout Louisville Metro; the proposed district results in the loss of a single family home for the maximum occupancy of 47 units; the proposed district encourages the use of innovative design methods by expanding the ability to provide a variety of housing types and styles. The proposed district better serves the needs to provide affordable housing than the current district.

**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-7, Multi-Family Residential on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Howard, Mims, Peterson and Jarboe**  
**NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes, Carlson and Lewis**

**Detailed District Development Plan and Binding Elements**

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

**WHEREAS**, the development plan does not significantly impact natural resources on the property proposed for development. An ephemeral stream will be piped within a sanitary sewer and drainage easement; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided as sidewalks will be provided at an off-site location per ordinance 85, series 2019 to benefit the community at-large; and

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**WHEREAS**, open space has been provided and will be integrated between this proposal and the adjacent multi-family community; 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

**WHEREAS**, the Louisville Metro Planning Commission finds, the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the development is similar in design with the development under construction in case 17DEVPLAN1062; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040. The proposal encourages a variety of housing types that are reflective of the need for missing middle and affordable housing in the Louisville area. The proposal supports intergenerational and mixed-income development that is connected to nearby employment centers. The proposal better serves the needs to provide affordable housing than the current development on the property.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - 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 Transportation Cabinet.
  - 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.



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- d. A street closure shall be approved and recorded for the unnamed right-of-way shown along the northern property line. A copy of the recorded instrument shall be placed in the case file. e. An agreement shall be entered into between the subject property and property at 9707 Cooper Church Road to allow for access to, and the use of, all recreational and common open space provided upon the property at 9707 Cooper Church Road and shown on the development plan in case 17DEVPLAN1062. This agreement shall be submitted for review and approval by the Planning Commission's legal counsel. The minimum total open space between the two properties shall not decrease below 2.21 acres (1.1 acres of recreational open space).
3. 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.
  4. 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.
  5. 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.
  6. The requirements for sidewalks shall be satisfied in accordance with Ordinance 85, Series 2019. Construction plans, bond and permit for the alternative sidewalk shall be provided at the time of construction plan approval for the subject site.

**The vote was as follows:**

**YES: Commissioners Brown, Howard, Mims, Peterson and Jarboe**

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**NOT PRESENT AND NOT VOTING: Commissioners Daniels, Tomes, Carlson and Lewis**