

PLANNING COMMISSION MINUTES
October 21, 2021

PUBLIC HEARING

Case No. 21-ZONE-0091

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: W Indian Trail Subdivision

Location: 5661 W Indian Trail & Parcel ID 104500730000

Owner: AL CAT LLC

Applicant: CL CAT LLC

Representative: Wyatt, Tarrant & Combs LLP

Jurisdiction: Louisville Metro

Council District: 13 - Mark Fox

Case Manager: Dante St. Germain, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

03:19:57 Dante St. Germain presented the case and showed a PowerPoint presentation (see staff report and recording for detailed presentation.)

03:30:42 Commissioner Mims disclosed that he designed the adjoining subdivision (Auburn Woods) but that this should not affect his review of this plan. In response to a question from Commissioner Mims, Ms. St. Germain said the Land Development Code did not require a geotechnical review for this site, nor did MSD in their preliminary review. She does not know if MSD may require one prior to construction.

The following spoke in support of the request:

Jon Baker, Wyatt Tarrant & Combs, 400 W Market St, Louisville, KY 40202

Derek Triplett, Land Design & Development, 503 Washburn Ave # 101, Louisville, KY 40222

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Summary of testimony those in support:

03:32:10 – Jon Baker, the applicant’s representative, presented the applicant’s case and showed a Power Point presentation (see recording for detailed presentation.)

03:39:06 – Derek Triplett, an applicant’s representative, gave details about the development plan (see recording for detailed presentation.)

03:45:45 Mr. Baker concluded the presentation.

03:47:17 Commissioner Carlson asked Mr. Baker if a binding element could be created addressing the use of West Indian Trail as the construction entrance. Commissioner Brown said his information was that West Indian Trail is a private road. If so, would it allow for that use?

03:48:28 Commissioner Carlson asked if the drainage ditch could handle heavy water runoff. Mr. Triplett used an aerial photo to address the issue. He said the water from this site is not making its way into the detention basin of the three houses to the north. See recording for detailed discussion.

03:50:46 Commissioner Carlson asked if the “hammerhead” at the end of the street is subject to review and approval by the Fire Department. Mr. Triplett said yes. Commissioner Carlson also requested a binding element stating that the character of the new homes would be compatible with the character of the existing neighborhood.

03:53:33 Commissioner Carlson and Mr. Baker discussed proposed new binding elements, as follows:

(for property access) If legally permissible, construction access to and from the property shall be via West Indian Trail. If construction access to the property cannot be legally established via West Indian Trail, then construction access to the property shall be via Auburn Oaks Drive. The applicant shall damage bond the existing Auburn Oaks and Auburn Woods roads.

(for building materials) The single-family homes constructed on the property shall be constructed utilizing building materials substantially the same as those utilized for the construction of the homes in the established Auburn Oaks subdivision, as shown by the example pictures used by the applicant in its presentation to the Planning Commission on October 21, 2021.

The following spoke in opposition to the request:

No one spoke.

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Deliberation:

03:53:27 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

04:01:45 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, 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 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 wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; 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 no historic assets are evident on the site; 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

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WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by car. New Cut Road can be accessed by going through the existing Auburn Oaks neighborhood; 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 tree canopy requirements will be met on the site; no karst features are evident on the site; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposal would permit an increase in the variety of housing types in the neighborhood by permitting accessory apartments on the lots; and 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 located relatively close to New Cut Road, a transit corridor, but there is no direct way for riders of transit to reach it. New Cut Road can be accessed by walking through the existing Auburn Oaks neighborhood; 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 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 on property described in the attached legal description be **APPROVED**.

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

NOT PRESENT: Commissioners Clare and Seitz.

Waiver

04:03:10 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, 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

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 7.3.30.E to allow a rear yard to overlap a drainage easement by more than 15% (21-WAIVER-0109).

The vote was as follows:

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

NOT PRESENT: Commissioners Clare and Seitz.

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Development Plan and Major Preliminary Subdivision Plan

04:04:28 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, 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 somewhat wooded and few natural resources exist on the site currently. Required tree canopy will be provided; 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

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 new development which could be constructed with accessory dwelling units in the rear; 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 Development Plan, **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.

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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.
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

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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).
 - 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.

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12. Any 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 applicant shall install a sign, to be located within the public right-of-way at the terminus of the proposed Auburn Woods Road extension. This sign shall indicate that this street shall, in the future, extend beyond the subject property and connect to roadways on adjacent properties. Such signage and location are subject to the prior approval by the Louisville Metro Public Works Department, and shall be installed prior to release of bonds for the installation of the street infrastructure.
15. 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.
16. 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.
17. If legally permissible, construction access to and from the property shall be via West Indian Trail. If construction access to the property cannot be legally established via West Indian Trail, then construction access to the property shall be via Auburn Oaks Drive. A bond and encroachment permit required by Metro Public Works for all work within the Auburn Woods Road right-of-way, and for road approaches on all surrounding access roads to the subdivision site due to damage caused by construction traffic.
18. The single-family homes constructed on the property shall be constructed utilizing building materials substantially the same as those utilized for the construction of the homes in the established Auburn Oaks subdivision, as shown

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by the example pictures used by the applicant in its presentation to the Planning Commission on October 21, 2021.

The vote was as follows:

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

NOT PRESENT: Commissioners Clare and Seitz.