

**Planning Commission Minutes
January 29, 2015**

Public Hearing

Case No. 14ZONE1045

Request: Change in zoning from R-5A to PRD with a variance and waiver; and a District Development Plan and a Subdivision Plan.

Project Name: Clover Trace

Location: 4806 Manslick Road

Owner/Applicant: CDJ Development LLC
Dan Smith, Representative
10122 Taylorsville Road
Louisville, KY 40299

Representative: William Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000North Hurstbourne Parkway 2nd Fl.
Louisville, KY 40223

Engineers: Kathy Linares and David Mindel
Mindel, Scott & Associates
5151 Jefferson Boulevard Suite 101
Louisville, KY 40219

Jurisdiction: Louisville Metro
Council District: 15 – Marianne Butler

Case Manager: **Julia Williams, AICP, Planner II**

Agency Testimony:

00:06:00 Julia Williams presented the case and showed a Power Point presentation (see recording and staff report for detailed presentation.)

00:10:52 In response to a question from Commissioner Proffitt, Ms. Williams said that MSD representatives are present today to discuss drainage. She added that there have been conversations between the applicant, MSD, and residents in the area about that topic.

The following spoke in favor of the proposal:

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000North Hurstbourne Parkway 2nd Fl., Louisville, KY 40223

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Kathy Linares and David Mindel, 5151 Jefferson Boulevard Suite 101, Louisville, KY 40219

Summary of testimony of those in favor:

00:11:43 William Bardenwerper presented the applicant's case and showed a Power Point presentation.

00:16:29 David Mindel, with Mindel Scott & Associates, discussed drainage issues and whether the issues are the result of building on this site. He talked about the drainage basin, off-site cave-ins, bonds, erosion, and other land/drainage topics.

00:20:43 Mr. Mindel discussed when the detention basin will be re-graded.

00:22:52 Mr. Bardenwerper concluded the presentation and agreed to Items #2 through #6 as Conditions of Approval.

00:24:25 In response to a question from Commissioner White, Mr. Bardenwerper and Mr. Mindel clarified that the applicant could not get more than ten permits before October.

00:26:42 Kathy Linares, with Mindel Scott & Associates, discussed the variance and waiver requests (particularly the 25-foot rear yard) and the buffer along Manslick Road. Ms. Williams also added some clarification and discussed Binding Element #18.

00:29:39 Mr. Bardenwerper discussed Binding Element #17 (enhanced landscaping.)

The following spoke in opposition to the proposal:

No one spoke.

The following spoke neither for nor against the proposal:

Charles Horton, 4507 Naneen Drive, Louisville, KY 40216

Summary of testimony of those in neither for nor against:

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00:31:51 Charles Horton spoke neither for nor against. He gave a brief history of drainage and flooding issues in the immediate area; what was agreed to between MSD and the developers; and the completion of the basin.

00:42:55 In response to a question from Commissioner Proffitt, Pat Barry and David Johnson from MSD discussed Mr. Mindel's calculations and whether the drainage issues would be resolved in this area.

00:45:31 In response to a question from Commissioner White, Mr. Johnson discussed the collapse of the 27-inch pipe behind Mr. Horton's property, which he said is MSD's responsibility, not the developer's. He also discussed flooding.

00:49:49 In response to a question from Mr. Horton, Mr. Johnson addressed severe erosion/flooding on one particular property (nearby, but off-site.) Again, he reiterated that the problems are MSD's responsibility, not the developer's.

Rebuttal:

00:51:26 During Mr. Bardenwerper's rebuttal, he and Commissioner White discussed the binding elements (October 15, 2015 for the detention basin). Commissioner Brown read a proposed Binding Element into the record, as follows:

"The detention basin shall be re-graded as designed no later than October 1, 2015, or issuance of the 11th permit for the development, whichever is sooner."

Mr. Bardenwerper agreed to this proposed language.

Deliberation:

00:53:17 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.

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00:56:32 On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is located in the Neighborhood Form District. The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and

WHEREAS, the Commission further finds that the Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages and incomes. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to large lot single family developments with cul-de-sacs, neo-traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero lot line neighborhoods with open space, and high density multi-family condominium-style or rental housing; and

WHEREAS, the Commission further finds that the Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; and

WHEREAS, the Commission further finds that Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets; and

WHEREAS, the Commission further finds that the proposal is for PRD which includes smaller lots and higher densities than what is found in the area. The

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proposal is not for a high density development but is located along an arterial. The proposal introduces a townhouse housing type to the area on single family lots. The single family lots proposed will be smaller than the nearby lots. The streets are designed with sidewalks to engage human interaction between the residents; and

WHEREAS, the Commission further finds that the proposal includes attached single family homes which make the development compact and efficient; and

WHEREAS, the Commission further finds that the proposal is for residential on single family lots which is the same use as the adjacent lots; and

WHEREAS, the Commission further finds that the proposal did not indicate it was for a specific elderly or disabled demographic; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and staff's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested change in zoning from R-5A to PRD on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Kirchdorfer, Turner, Peterson, White, and Tomes.

NO: No one.

NOT PRESENT: Commissioner Butler.

ABSTAINING: No one.

Variance

00:56:36 On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the variance will not affect the public because the variance is only a result of subdividing the

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property instead of maintaining the previously approved patio home development; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity. The homes will not be located closer to the property line than was previously approved when the site was a patio home development site; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public. The variance will not affect the public because the homes will not be located closer to the property line than was previously approved when the site was a patio home development site; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations. The variance is not unreasonable because it is due to the creation of lot lines and not due to a new location of the structures; and

WHEREAS, the Commission further finds that the variance request arises from the developer wanting to subdivide the property instead of continuing with the patio home development where all the buildings were located on one lot; and

WHEREAS, the Commission further finds that the strict application would deprive the applicant of reasonable use of the land because the setbacks when the proposal was a patio home development were not an issue and the issue only arises from the creation of lot lines; and

WHEREAS, the Commission further finds that the circumstances are a result of the applicant wanting to create lot lines and have individual lots instead of one large patio home lot; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented today, the staff report, the applicant's presentation and staff's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance to permit encroachments into the rear yard setbacks

The vote was as follows:

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YES: Commissioners Blake, Proffitt, Brown, Jarboe, Kirchdorfer, Turner, Peterson, White, and Tomes.

NO: No one.

NOT PRESENT: Commissioner Butler.

ABSTAINING: No one.

Waiver

00:57:10 On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested waiver will not affect property owners because per the concept landscape plan landscaping will still be planted within the setback along Manslick Road; and

WHEREAS, the Commission further finds that Cornerstone 2020 will not be violated because planting and screening will be installed within the setback according to the concept landscape plan; and

WHEREAS, the Commission further finds that the extent of the waiver is necessary because the buffer is in addition to the setback which would push the proposed structures further into the development when the idea is only to subdivide the lots; and

WHEREAS, the Commission further finds that the strict application would deprive the applicant of reasonable use of the land because the 20' buffer is in addition to the setback which was not anticipated when the proposal was to be developed as patio homes; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented today, the staff report, the applicant's presentation and staff's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver request to not provide the 20' LBA along Manslick Road.

The vote was as follows:

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YES: Commissioners Blake, Proffitt, Brown, Jarboe, Kirchdorfer, Turner, Peterson, White, and Tomes.

NO: No one.

NOT PRESENT: Commissioner Butler.

ABSTAINING: No one.

Detailed District Development Plan and Subdivision Plan

00:57:56 On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site has no existing natural features; and

WHEREAS, the Commission further finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community have been met. Sidewalks are being provided from the existing sidewalk to the interior lots 24-32; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development has been met. Open space lots are being provided throughout the development; and

WHEREAS, the Commission further finds that MSD has preliminarily approved the proposal; and

WHEREAS, the Commission further finds that the proposed single family lots will be located adjacent to other single family lots; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented today, the staff report, the applicant's presentation and staff's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development plan/Subdivision plan, **SUBJECT** to the following Binding Elements:

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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. 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. 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 Louisville Metro Department of Inspections, Permits and Licenses, 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 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.
 - 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.

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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. 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.
7. 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 noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements.
 - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
8. 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.
9. With the exception of vinyl accents, soffits, and trim, buildings shall feature 100% brick exteriors as shown in the renderings as presented at the January 29, 2015 Planning Commission meeting.

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10. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
11. 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.
12. 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.
13. 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.
14. 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.
15. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
16. Improvements to Manslick Road as required by the Kentucky Transportation Cabinet and Public Works shall be completed prior to the issuance of the third building permit of a residential unit.
17. The Applicant shall install a continuous evergreen screen along the Dellwood Drive property line to provide a buffer between existing

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residential property and the development site. The applicant shall work with the owner of 1402 Dellwood Drive to develop a supplemental landscaping plan to install additional landscape materials on the 1402 Dellwood Drive side of the evergreen screen. This supplemental landscaping plan shall be finalized and approved by PDS staff within 60 days after the final approval by the legislative body. To the extent the supplemental landscape materials are located on the property at 1402 Dellwood Drive; the owner of that property shall be responsible for the maintenance of the landscaping.

18. The applicant will work with PDS staff to develop a landscaping plan to screen the units along Manslick Road from the roadway. This can be achieved through clustering of plantings, a continuous screen where appropriate, or other similar measures.

Binding Elements added at January 29, 2015 Planning Commission hearing:

19. A bond will be required at record plat approval. This means all drainage will be inspected and approved before MSD takes it over.
20. The ditchline along the north property line will be re-graded and erosion repaired no later than June 1, 2015.
21. The headwalls at the outlet behind the Horton property will be replaced with poured concrete (currently blocks) no later than June 1, 2015.
22. The detention basin shall be re-graded as designed no later than October 1, 2015, or prior to the issuance of the 11th building permit for the development, whichever is sooner. The basin does have the capacity for most of their development as it stands today.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Kirchdorfer, Turner, Peterson, White, and Tomes.

NO: No one.

NOT PRESENT: Commissioner Butler.

ABSTAINING: No one.