

PLANNING COMMISSION MINUTES
December 16, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0108

Request: Change in zoning from R-4 to PRD with detailed district development plan, waiver to allow easement to overlap rear yards, and variances

Project Name: Hardens Cove

Location: 5402 & 5406 Cooper Chapel Road

Owner: Robin Underwood Johnson

Applicant: Hardens Cove, LLC

Representative: Wyatt, Tarrant, & Combs, LLP - Jon Baker

Jurisdiction: Louisville Metro

Council District: 23 - James Peden

Case Manager: Joel Dock, AICP, Planning Coordinator

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:

00:13:29 Joel Dock presented the case and showed a Power Point presentation (See staff report and recording for detailed presentation.)

00:19:20 In response to a question from Commissioner Howard, Mr. Dock confirmed that the required setback is 15 feet; the applicant is requesting a 12-foot setback. The variance is for 3 feet.

The following spoke in support of the request:

Jon Baker, Wyatt Tarrant and Coombs, 400 W Market St, Louisville, KY 40202

Kelli Jones, Sabak Wilson & Lingo, 608 S 3rd St, Louisville, KY 40202

Dan Smith (was present but did not speak)

Summary of testimony of those in support:

00:19:47 Jon Baker, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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00:28:18 Kelli Jones, an applicant's representative, explained the development plan and landscaping (see recording for detailed presentation.) She specifically outlined the changes that have been made to the plan since it was heard before the LD&T Committee.

00:39:12 Mr. Baker concluded the presentation.

00:40:52 In response to a question from Commissioner Seitz, Mr. Dock said that he is drafting binding element language regarding plantings along the entryway of Street "A". *This will be presented before a vote is taken.*

00:41:31 In response to a question from Commissioner Mims, Ms. Jones discussed why the applicant has chosen not to do a "green infrastructure" improvement on the detention basin (see recording.)

00:43:00 In response to a question from Commissioners Brown and Carlson, Ms. Jones and Mr. Baker discussed the street names, which have been changed on the plan being presented today. Ms. Jones said the applicant will follow whatever it is that Metro EMS and any other agency may recommend at record plat level.

00:45:03 In response to a question from Commissioner Mims, Commissioner Brown said the applicant could not put in an emergency connection because the stub street does not align (see recording for discussion.)

00:45:40 In response to a question from Commissioner Howard, Ms. Jones and Mr. Dock discussed dedication of right-of-way. Ms. Jones added that these will be public streets; with dedicated ROW in the whole development. Binding elements #2C and #11 in the staff report address this issue.

The following spoke in opposition to the request:

Sandra Roark, 5312 Cooper Chapel Road, Louisville, KY 40229

Summary of testimony of those in opposition:

00:49:05 Sandra Roark asked if this was going to be rental property, or for sale? She also said this development will affect two sides of their property – will the applicant install trees to block light and sound?

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Rebuttal:

00:51:39 Mr. Baker delivered rebuttal, and noted that these are not rental units, they will be for sale. He and Ms. Jones discussed adding additional landscaping/screening around the Roark property. That will be covered by the binding element Mr. Dock is drafting which will be presented prior to a Commission vote.

Deliberations:

00:54:09 Commissioners' deliberation.

00:54:24 Mr. Dock read the proposed binding elements into the record, as follows:

12. Landscaping shall be provided along the entryway of Street "A" and abutting the Roark property (5312 Cooper Chapel Road) as presented at the Planning Commission public hearing on December 16, 2021.

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

01:01:56 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 proposal meets Land Use & Development Goal 1: Community Form because the subject property is located on a primary collector roadway roughly ½ miles east of a major arterial roadway which provides access to goods, services, groceries, and employment centers. Demand and adequate infrastructure are available to serve a growing population; and appropriate transition between uses that are substantially different in scale and intensity or density of development will be provided as required by the Land Development Code. No transition is required or necessary between development of similar densities and intensities; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the subject property is mostly vacant. Forty-eight additional housing units will be provisioned; and

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WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because all requirements of the MSD will be met, and the proposed district will accommodate through its development plan necessary buffer and detention at the rear of the property; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the site does not appear to contain distinctive cultural features. All tree canopy required will be provided in accordance with the LDC will also be provided; and the site does not appear to contain distinctive cultural or historical features; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the subject property is located on a primary collector roadway roughly ½ miles east of a major arterial roadway which provides access to goods, services, groceries, and employment centers. The proximity of the proposed density to Preston Highway and the expected growth of the area supports transit-oriented development and an efficient transportation network; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because access to the subject site is through area of similar density and intensity along a collector level roadway; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the subject property is located on a primary collector roadway roughly ½ miles east of a major arterial roadway which provides access to goods, services, groceries, and employment centers. The proximity of the proposed density to Preston Highway and the expected growth of the area encourages a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Cooper Chapel Roadway possesses a sidewalk network that connects with Preston Highway; the proposed district would increase demand for public transit in an area of population and non-residential growth; all transportation improvements required of the development must be provided; Cooper Chapel Road provides a sidewalk connection to Preston Highway. The developer will provide all internal sidewalks and connection to adjacent development as required by the LDC; all transportation improvements required of the development will be provided; and no access to high speed roadways is proposed or provided for individual units; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because the proposal would appear to have adequate levels of connection to utilities based on surrounding development; the proposal would appear to have access to an adequate supply of potable water and water for fire- fighting purposes based on surrounding development; and MSD will

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ensure adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because all tree canopy and preservation required by the Land Development will be provided. Vegetative areas abutting streams will also be maintained or restored as required by the Land Development Code; no karst features have been identified on the site by the applicant and/or developer; and MSD will ensure that the development does not negatively impact the integrity of the floodplain that is present at the rear of the subject site; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposed district allows for the provisioning of a variety of housing styles that add to the diversity of options within the area; and the proposed district supports and promotes housing options and environments that support aging in place as the district allows for alternative housing options and arrangements near goods, services, and amenities; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because the proposed district encourages inter-generational and mixed income development that is connected to the neighborhood as sidewalks are available and services and amenities are within proximity. The proposed district creates housing opportunities and choice at a location capable of supporting higher densities of development; and currently, Preston Highway public transit terminates at St. Rita Drive which is roughly 1.75 miles north of Cooper Chapel Road. The subject site is, however, located where access to goods, services, amenities, and employment opportunities are provided and there is demand and infrastructure in place to support transit-oriented development; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because the proposed district allows for the incorporation of housing options in an area that supports multi-family development. It encourages the provision of fair and affordable housing by allowing for a variety of ownership options and unit costs throughout Louisville Metro; no housing units will be lost as a result of this zoning change and 48 additional units will be added; and the incorporation of this district in the area encourages a variety of housing types and occupancy types within the area which increases the ability to provision clustering, mixed- use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing as the district allows for reduced lot sizes and increased density near services, amenities, and employment which are conveniently accessible; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change-in-Zoning from R-4, single-family to PRD, Planned Residential Development on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

ABSTAIN: Commissioner Price.

ABSENT: Commissioner Clare.

Waiver

01:03:37 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 and will ensure proper drainage on the subject site; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040. Community form Goal 1, Policy seeks to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Policy 12 calls for the parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. The overlap will not result in any adverse impacts upon adjacent property or future residents as sufficient open space is provided within the development; 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 a decrease in the overlap would result in larger lots and impact the ability to provision the proposed development which provides for recreational amenities and housing at an appropriate location; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant for those reasons provided in the above justification; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of Land Development Code (LDC), section 7.3.30.E to allow greater than 15% overlap between rear yard and drainage easement.

The vote was as follows:

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

ABSTAIN: Commissioner Price.

ABSENT: Commissioner Clare.

Variance

01:05:13 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 requested variance will not adversely affect the public health, safety or welfare as all site lines for vehicles and pedestrians will be maintained for their safe movement; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the proposal is for a new development; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as it will not impact the safe movement of pedestrians or vehicles; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal does not cause a hazard or nuisance or result in adverse impacts to public health, safety, or welfare; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the variance has been requested to accommodate street improvements; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as relief in

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accordance with items 'a' through 'd' of the standard of review have been adequately justified; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance of LDC, section 5.3.1.D to encroach upon the required 15' street side setback for select lots as shown on the development plan, leaving a remainder of 12 feet street side yard setback.

The vote was as follows:

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

ABSTAIN: Commissioner Price.

ABSENT: Commissioner Clare.

Detailed District Development/Major Preliminary Subdivision Plan

01:06:57 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:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. Tree canopy and open space will be provided and waterways will be protected; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided; and

WHEREAS, the Commission further finds that open space will be provided in the form of recreation and to preserve natural features – protected waterway; and

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WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 proposed development is generally compatible with development in the area and the pattern of the form district; and

WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan and Major Preliminary Subdivision 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. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
 - c. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded
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.

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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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
7. 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.
8. 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.
9. 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.
10. Prior to the recording of the record plat for any section or phase copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.

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- b. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 - c. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
11. All necessary right-of-way within the area of the approved development plan to enable the future connection of Chathamwood Drive across the property at 5318 Chathamwood Drive shall be provided at the time of record subdivision plat. A sidewalk connection from the development site to connect with the sidewalk terminating along the frontage of 5317 Chathamwood Drive shall be made. No connection from 5318 Chathamwood Drive shall be made to any roadway proposed on the approved development plan, unless the roadway connection has been completed.
12. Landscaping shall be provided along the entryway of Street "A" and abutting the Roark property (5312 Cooper Chapel Road) as presented at the Planning Commission public hearing on December 16, 2021.

The vote was as follows:

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

ABSTAIN: Commissioner Price.

ABSENT: Commissioner Clare.