

Planning Commission

Staff Report

August 5, 2021



Case No:	20-ZONE-0060
Project Name:	Cedar Creek Road Apartments
Location:	8000 & 8006 Cedar Creek Road, Parcel ID 065600310000
Owner(s):	Angela Nicole Stivers, Stacey Nunez, Joseph Kevin Wright
Applicant:	Hagan Properties
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Waiver** of 10.2.4.B.3 to allow a utility easement to overlap a required Landscape Buffer Area more than 50% (21-WAIVER-0020)
- **Detailed District Development Plan/Major Preliminary Subdivision** with Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located along Cedar Creek Road near the intersection with Cedar Garden Drive, and consists of three contiguous parcels. The applicant proposes to rezone the site to R-6 to construct a new 324-unit multi-family development.

The site is generally surrounded by large-lot single-family residential uses, with a mobile home park abutting the site to the west. Cedar Creek runs through the west of the site.

The site is located in the study area for the Fern Creek Small Area Plan, in Quadrant III (Southwestern Quadrant). This site is outside the preservation strategy area, where preservation of the rural, agricultural landscape is emphasized, and so no particular recommendations are made for this site.

The zoning case was heard by the Planning Commission on April 12, 2021 at a night hearing. The Commission recommended denial of the zoning change to Metro Council, and did not act on the Detailed District Development Plan, the waiver, or a variance which was also requested at the time and withdrawn at the hearing. Metro Council has overturned the Commission's recommendation and approved the zoning change. The Detailed District Development Plan and the waiver now return to the Commission for action. The requested variance has been permanently withdrawn.

STAFF FINDING

The plan meets the requirements of the Land Development Code with the exception of the requested waiver. Staff finds that given the zoning of the site, the plan meets the guidelines of the Comprehensive Plan. Staff finds that the waiver is adequately justified and meets the standard of review.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

Fern Creek Small Area Plan (2001)

MSD and Transportation Planning have provided preliminary approval of the proposal.

The site is located in Quadrant III of the Fern Creek Small Area Plan study area (the Southwestern Quadrant). This quadrant identifies a preservation strategy area, in which the rural, agricultural landscape is proposed to be preserved. This site is outside the preservation strategy area, and so no specific recommendations are made for the site.

Metro Council placed an additional binding element on the property as a condition of the zoning approval. The new binding element reads:

Developer shall pay up to \$100,000 towards sidewalk construction between its development and Bardstown Road if the applicable government agency enters into a construction contract for completion of such sidewalks from the development to Bardstown Road within five (5) years of the date of this Ordinance.

This is Binding Element #7 on the site currently.

Planning Commission discussed this binding element when the case was heard at the July 1, 2021 hearing, and the case was continued at that time to allow the developer to work with Public Works to amend this binding element. Details concerning the construction of the stub road in the rear of the property were also discussed, as well as other concerns relating to the Cedar Creek Road/Bardstown Road intersection. The following binding elements are suggested by the applicant to address these concerns, and, if adopted, would become Binding Elements # 7-9 in lieu of the #7 placed on the rezoning by Metro Council:

Developer shall contribute up to \$100,000 towards sidewalk design, right of way acquisition and construction of sidewalks from the development to Bardstown Road. Developer shall contribute up to \$50,000 of the \$100,000 toward sidewalk design and right of way acquisition within 60 days of written request from the applicable government agency provided such request occurs not earlier than the issuance of its first building permit and not later than 3 years following the issuance of its first building permit. Developer shall contribute up to the remaining \$50,000 of the \$100,000 within 60 days of written request from the applicable government agency and proof that the applicable government agency has entered into a construction contract which commencement shall be within 60 days of execution provided such request occurs not earlier than one year following the issuance of its first building permit and not later than 5 years following the issuance of its first building permit.

Developer shall reserve the area shown on the site plan for future stub road connections to the north and south at the locations shown on the site plan and will dedicate (and Metro Public Works shall accept) this area as public right-of-way within 60 days of written request of the dedication by Metro Public Works. In addition, Developer shall contribute \$218,610 to Metro Public Works (within 45 days of the earlier to occur of the issuance of the final certificate of occupancy or commencement of construction of the road by Metro Public Works) for the eventual construction by Metro Public Works of the stub road which construction shall complete

the connection to the north or south as shown on the site plan. If the stub road construction has not commenced within 5 years of the date of the contribution under a contract requiring the completion of the stub road within 6 months after commencement of construction, Metro Public Works shall refund the contribution to Hagan Properties or its designees, successors or assigns.

Prior to the applicable government agency issuing the final certificate of occupancy, the developer or its successors and assigns shall design, pursuant to Metro Public Works standards, and complete the construction of a right turn lane on eastbound Cedar Creek Road at Bardstown Road. The required improvements shall be based on the TIS analysis dated February 16, 2021 prepared by Diane B. Zimmerman and submitted to Metro Public Works February 17, 2021. The improvements shall be limited to an eastbound right turn lane 200' in length of which 50' is a taper lane.

INTERESTED PARTY COMMENTS

No interested party comments specifically relating to the development plan have been received by staff. Several in opposition to the zoning change were received. The zoning change is not under consideration at this time.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4.B.3

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the required plantings will still be provided within the LBA.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The required buffering will be provided.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as there is no logical location on the property for the easement except where the applicant has proposed it, and the overlap occurs at a relatively small portion of the required LBA.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The 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.

STAFF: 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 because the required easement cannot be readily moved.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP

- (a) 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;

STAFF: Tree canopy will be provided on the site. Cedar Creek runs through the site to the west and the floodplain around Cedar Creek encroaches into the site. The site design permits the provision of the full required stream buffer around Cedar Creek, and the floodplain is generally being avoided by development.

- (b) The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within the development has been provided, and Metro Public Works has approved the preliminary development plan.

- (c) The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space is being provided as required.

- (d) 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;

STAFF: 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.

- (e) The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design is in compliance with the current development in the area as the zoning change has been approved and the density is within the allowable under the current R-6 zoning.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Land Development Code with the exception of the requested waiver. The development plan is in compliance with the Comprehensive Plan, as the plan provides for adequate buffering from nearby single-family residential and provides adequate usable open space. The site plan preserves the creek and the floodplain.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Detailed District Development Plan/Major Preliminary Subdivision** with **Binding Elements**

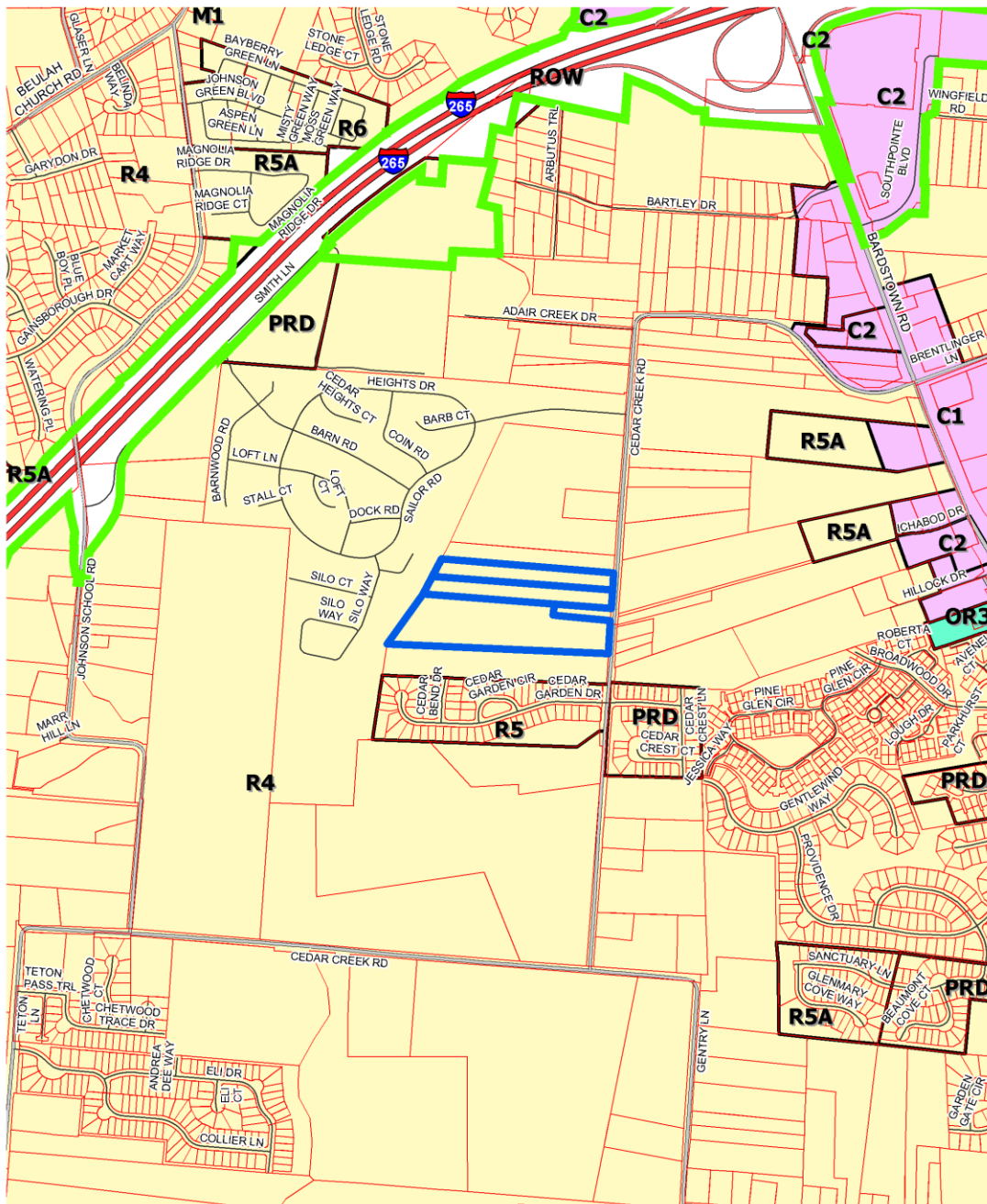
NOTIFICATION

Date	Purpose of Notice	Recipients
07/22/2021	Hearing before PC	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 22

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Binding Elements

1. Zoning Map



Cedar Creek Apartments

feet



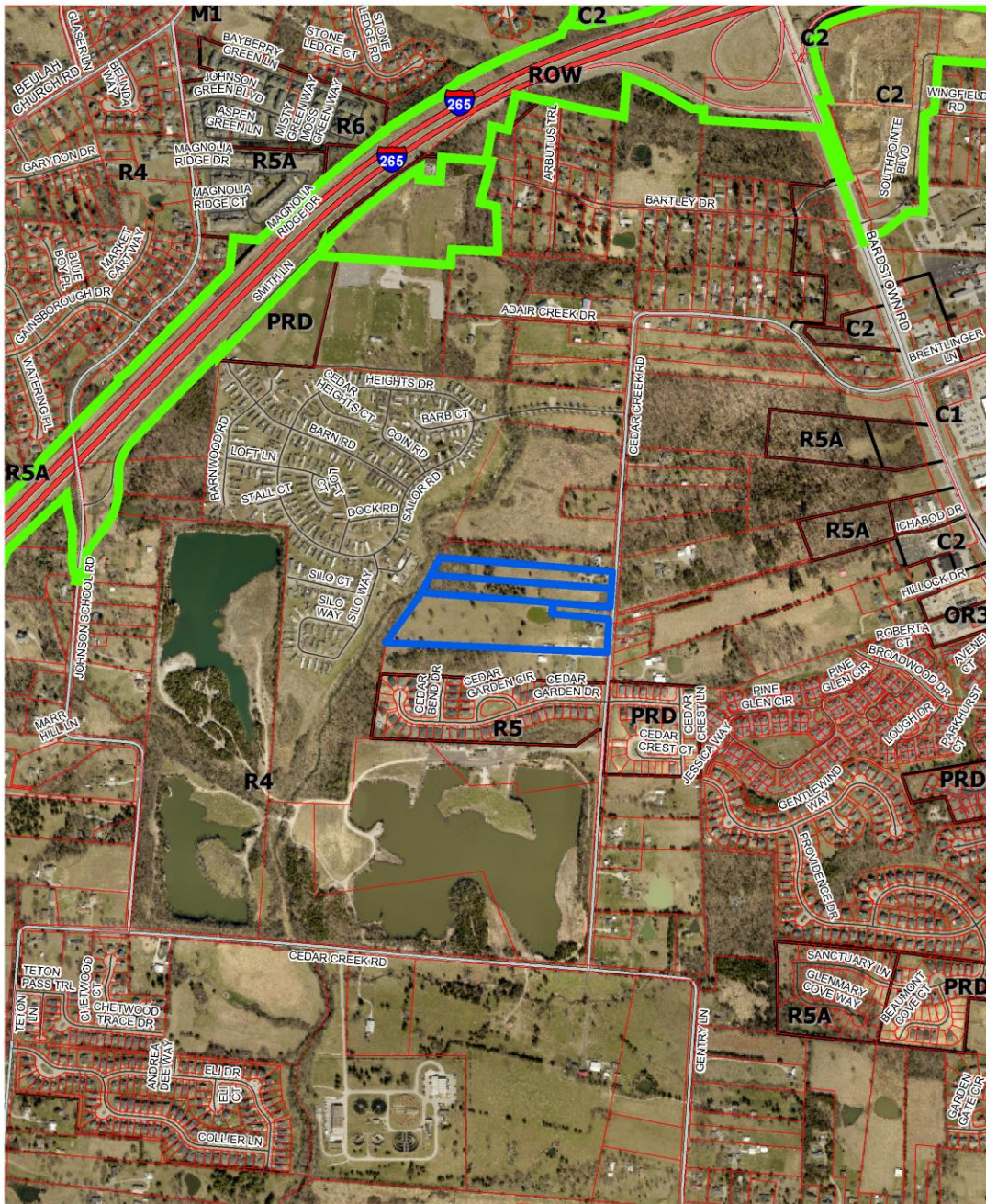
940

Map Created: 4/6/2021



Copyright (c) 2021, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

2. Aerial Photograph



Cedar Creek Apartments

feet



940

Map Created: 4/6/2021



Copyright (c) 2021, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

3. Proposed 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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 1, 2021 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
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. Developer shall pay up to \$100,000 towards sidewalk construction between its development and Bardstown Road if the applicable government agency enters into a construction contract for completion of such sidewalks from the development to Bardstown Road within five (5) years of the date of this Ordinance.