

**PLANNING COMMISSION MINUTES**  
**June 4, 2015**

**PUBLIC HEARING**

**CASE NO. 14ZONE1053**

Request: Change in zoning from R-5A to PRD; Setback Variance;  
Revised Detailed District Development Plan/Preliminary  
Subdivision Plan with Binding Element Amendments

Project Name: The Villas of Pavilion Park

Location: 7500 Crestline Road

Owner: Pavilion Park Development LLC  
119 South Sherrin Avenue, Suite 150  
Louisville, Ky. 40207

Applicant: Thomas A. Mussleman Sr.  
Pavilion Park Development, LLC  
119 South Sherrin Avenue, Suite 150  
Louisville, Ky. 40207

Representative: Cliff Ashburner  
Wyatt, Tarrant and Combs, LLP  
500 West Jefferson Street, Suite 2800  
Louisville, Ky. 40202

Jurisdiction: Louisville Metro

Council District: 25 – David Yates

**Case Manager: Christopher Brown, 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

03:33:46 Mr. Brown discussed the case summary, standard of review and staff analysis from the staff report.

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

Cliff Ashburner, 500 West Jefferson Street, Suite 2800, Louisville, Ky. 40202

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

03:36:36 Mr. Ashburner gave a Power Point presentation. "We talked with the residents for about a year and a half about what they wanted to do and how it was going to work with the remainder of the development. We had different proposals – we thought about making them a condominium island within the single family subdivision and they elected to go through the rezoning process so we have taken on that responsibility."

**The following spoke neither for nor against this request:**

Kyle Galloway, 401 West Main Street, Suite 1950, Louisville, Ky. 40202

**Summary of testimony of those neither for nor against:**

03:39:35 Mr. Galloway said he's been working with Mr. Ashburner and the homeowners for a year and a half and entered an agreement before a zoning application was even filed regarding how the property would be handled/treated.

Mr. Galloway said he doesn't support or oppose the request. He's just here to observe.

**Discussion:**

3:40:21 Commissioner Kirchdorfer stated, "I have a concern. Typically we've done these on lots that were zoned for a condo regime and then we came back and put the lines in. Putting a line down a building that's already built raises concern with me - the Building Code concerning lot lines and a two or one hour separation. I'd hate to see you try and sell it and then find out you're not meeting the Building Code." Has the Building Dept. looked at this case? Mr. Ashburner said no, but he has advised his client of the situation. "I would expect, obviously, before the subdivision plat is approved, that they're going to have to establish more adequate fire protection. I think these have been constructed that way".

3:43 Commissioner Proffitt asked how lot 5 would be utilized. Mr. Ashburner said it's open space.

**Deliberation**

03:44:47 The commissioners discussed the fire wall issue raised. Commissioner Tomes said he thinks it should be put in a disclosure statement for the realtor to handle.

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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-5A to PRD

3:47:56 On a motion by Commissioner Tomes, seconded by Commissioner Proffitt, the following resolution was adopted.

**WHEREAS**, 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 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 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**, 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 Louisville Metro Planning Commission finds, with the exception of the front yard setback variance due to the change in lot lines, the proposal meets the

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guidelines of the Comprehensive Plan and the requirements of the Land Development Code; and

**WHEREAS**, the Louisville Metro Planning Commission further finds all other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND APPROVAL** of the zoning change from R-5A to PRD, Case No. 14ZONE, to Metro Council based on the evidence and testimony heard today and the justification statements in the staff report.

**The vote was as follows:**

**YES: Commissioners Blake, Kirchdorfer, Proffitt, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Butler, Jarboe, Peterson and white**

**ABSTAINING: No one**

**Variance**

On a motion by Commissioner Tomes, seconded by Commissioner Proffitt, the following resolution was adopted.

**WHEREAS**, The requested variance will not adversely affect the public health, safety or welfare since the buildings have already been constructed along the access drive; and

**WHEREAS**, The requested variance will not alter the essential character of the general vicinity since it follows the setbacks from the originally approved plan prior to the separation of the lots; and

**WHEREAS**, The requested variance will not cause a hazard or nuisance to the public since the buildings have already been constructed along the access drive; and

**WHEREAS**, The requested variance will not allow an unreasonable circumvention of the zoning regulations since it followed the regulations prior to the current plan when the patio home units were located on a single lot; and

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**WHEREAS**, The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the existing buildings are being located now on newly created lots; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring moving the existing buildings to meet the 15' front yard requirement; and

**WHEREAS**, the Louisville Metro Planning Commission further finds 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 since the previous approval and plan were based upon setbacks for the single large lot for the patio homes.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.3.1.D.1.A of the Land Development Code to reduce the required front yard from 15 feet to 8-foot base on the staff report analysis for the variance and the evidence and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Blake, Kirchdorfer, Proffitt, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Butler, Jarboe, Peterson and white**

**ABSTAINING: No one**

**Development Plan and Binding Elements**

On a motion by Commissioner Tomes, seconded by Commissioner Proffitt, the following resolution was adopted.

**WHEREAS**, There does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

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**WHEREAS**, The open space requirements for the site are being met on Lot 5 and scattered throughout the properties; and

**WHEREAS**, 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will follow appropriate setbacks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE**, Case No. 14ZONE1053, the Revised Detailed District Development Plan, Preliminary Subdivision Plan and the proposed binding elements on pages 17 and 18 of the staff report.

#### Existing 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. 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 (64 SF lots) shall occur without approval of the Planning Commission.
3. Use of the subject site shall be limited to single family residential and patio homes. There shall be no other use of the property unless prior approval is obtained from the Planning Commission/ LD&T Committee. Notice of a request to amend this binding element shall be given in accordance with the Planning

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Commission's policies and procedures. The Planning Commission/LD&T Committee may require a public hearing on the request to amend this binding element.

4. The density of the development shall not exceed 4.08 dwelling units per acre on SF tract (64 units on 15.68 acres), 5.24 dwelling units per acre on the west MF tract (23 units on 4.39+/- acres) and 4.13 on the east MF tract (31 units on 7.5+/- acres).
5. Signature entrance wall and signs shall be in accordance with Chapter 8 and Section 4.4.3.B. of the LDC, or as presented at the public hearing.
6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
7. The existing access points to Manslick Road and Cristland Road are to be closed and access to the site be made from the new curb cuts as shown on the development plan. There shall be no direct vehicular access from individual lots to Manslick Road or Cristland Road
8. 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.
9. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or demolition permit) is requested:
  - a. The development plan must receive full construction approval from 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 prior to requesting a building permit. 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 prior to issuance of any building permits.
  - d. A road closure approval for Cartledge Court shall be approved prior to requesting record plat recording.

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- 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.
  - f. The 30-foot tree preservation easement along the east property line shall be recorded on the subdivision record plat prior any permit, including clearing and grading, is requested for the site. The 30-foot tree preservation easement shall be identified as TCPA on the on the Tree Preservation Plan.
10. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
11. 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.
12. 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.
13. 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 TCPA-s 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.
14. 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



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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.

15. The materials and design of proposed structures shall be substantially the same as depicted in the PowerPoint presentation, presented by the applicant at the September 29, 2004, Planning Commission meeting. The façade of the homes facing Manslick Road shall be constructed of brick.
16. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

#### **For Tree Preservation Areas (TCPA-s)**

17. The site shall be developed in accordance with the tree canopy preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.

All plans setting out tree canopy preservation areas must contain the following notes:

1. Tree preservation areas (TCPAs) identified on this plan represents individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code and are to be permanently preserved. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPA-s are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.
2. Dimension lines have been used on this plan to establish the general location of TCPA-s and represent minimum distances. The final boundary for each TCPA shall be established in the field to include canopy area of all trees at or within the dimension line.
3. Tree protection fencing shall be erected around all TCPA-s prior to site disturbance approval to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed.

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4. No parking, material storage, or construction activities are permitted within the TCPA-s.
5. During all construction activity (includes clearing, grading, building construction and VUA construction) a copy of the approved tree preservation plan shall be on site.
18. The developer shall make improvements to Manslick Road per the Concept Roadway Improvement Plan submitted and as required by Metro Public Works.
19. The Developer shall design the proposed extension of Crestline Road (Street "C" on the development plan) with a "speed table" or other traffic calming devise at or near its intersection with Street "D". The location and design of the devise shall be reviewed and approved by LMPW&T prior to the commencement of construction as part of the construction plans.
20. The Developer shall provide a sidewalk that shall extend to and turn the corner at the intersection of Manslick Road and Cristland Road.
21. The Developer is committed to construct homes in this development that are substantially similar to those presented in the PowerPoint presentation at the September 29, 2004 public hearing. The single family units shall have a minimum floor area, excluding the garage, of 1600 s.f. for a single story home, 1800 s.f. for multi-level homes and 2000 s.f. for a two story home. All of the homes shall be constructed using 80% brick or stone and therefore accent materials shall not exceed 20% of the total façade.
22. This development shall provide a 30 foot landscape easement with a minimum height 4 foot berm adjacent to Manslick Road at the rear of lots 1-9. This berm shall be landscaped in accordance with the concept landscape plan presented at the October 14, 2004 Land, Development and Transportation meeting. Construction of this berm shall be completed and the plant materials installed as a part of the Phase I construction and prior to a certificate of occupancy for the adjacent homes on lots 1-9.
23. A 30 foot tree preservation easement shall be maintained along the east property line where the site is adjacent to lot 395, the First United Baptist Church. Neither the Developer nor the land owner shall remove trees in this area beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. Neither location of utilities, nor any activity that will result in the loss of the existing trees is allowed in this area. Tree

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protection fencing shall be installed prior to construction to protect the trees in this easement.

24. The Developer has agreed to the requests of the Neighborhood Committee as identified in the document submitted at the October 14, 2004, LD&T Meeting and titled Pavilion Park Outline for the Deed of Restrictions. These shall be included in the Deed of Restrictions for Pavilion Park.

**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. The development shall be in accordance with the approved Revised Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved (10) shall occur without approval of the Planning Commission.
3. Use of the subject site shall be limited to single family residential and patio homes (condominiums). There shall be no other use of the property unless prior approval is obtained from the Planning Commission/ LD&T Committee. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The Planning Commission/LD&T Committee may require a public hearing on the request to amend this binding element.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Development Louisville Divisions of Transportation Planning and Construction Permit Review and the Metropolitan Sewer District.

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- b. 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.
    - c. 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.
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 / conditions of approval.
  - 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 4<sup>th</sup>, 2015 Planning Commission meeting.

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10. 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.
11. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.

**The vote was as follows:**

**YES: Commissioners Blake, Kirchdorfer, Proffitt, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Butler, Jarboe, Peterson and white**

**ABSTAINING: No one**