

PLANNING COMMISSION MINUTES
July 15, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0016

Request: Change in zoning from R-4 to R-5A, with Detailed District Development Plan and Binding Elements, Major Preliminary Subdivision, and Variances and Sidewalk Waiver
Project Name: Old Heady Road Subdivision and Multi-Family
Location: Parcels 004702920000, 004702930000, 004702940000
Owner: Daniel & Todd Bridwell
Applicant: Sunshine Builders LLC
Representative: Bardenwerper, Talbott & Roberts
Jurisdiction: Louisville Metro
Council District: 20 – Stuart Benson
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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:42:54 Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Derek Triplett, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

Summary of testimony of those in favor:

Nick Pregliasco gave a power point presentation explaining the proposal and history of this case (see recording for detailed presentation).

Derek Triplett continued the presentation and discussed the layout of the property. Some of the obstacles are as follows: future Urton Ln. corridor right-of-way; steep slopes; and transmission overhead electric easement along the Gene Snyder (see recording for detailed presentation).

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Mr. Pregliasco discussed the R-4 zoning density transfer as well as conditions of approval (see recording for detailed presentation).

Joe Reverman stated, if the adjacent property develops, we don't want to forego sidewalks for that new development. Mr. Triplett said he agrees. Mr. Reverman said it can be a condition of approval for the waiver (see recording for detailed presentation).

The following spoke in opposition to this request:

Gerard Derby, 5411 Old Heady Road, Louisville, Ky. 40299
Jonathan Hagemann, 14001 Fancy Gap Drive, Louisville, Ky. 40299
Josh Reynolds, 13300 Stepping Stone Way, Louisville, Ky. 40299

Summary of testimony of those in opposition:

Gerard Derby said he's concerned about the infrastructure (roads). Also, will there be rental properties (apartments) or Section 8 housing? Mr. Pregliasco said it will be single family homes (see recording for detailed presentation).

Jonathan Hagemann discussed landscape buffer areas and the fact that the proposed smaller lots don't match the neighboring lot sizes (see recording for detailed presentation).

Josh Reynolds discussed the following: requests another traffic study be performed; additional natural landscaping; devaluation of existing homes; and slopes (see recording for detailed presentation).

Ms. St. Germain explained development transfer potential (see recording for detailed presentation).

Rebuttal

Mr. Pregliasco described the screening – subdivision backing up to another subdivision doesn't require additional screening. The proposed area traffic moves/flows very well and the proposal will have no negative impact on that.

Mr. Pregliasco agrees with the additional condition of approval regarding grading of lots (see recording for detailed presentation).

Deliberation

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Planning Commission 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 Change from R-4 Single Family Residential to R-5A Multi-Family Residential

On a motion by Commissioner Carlson, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal is not for higher density or intensity zoning; the proposal is not for significantly different intensity or density or scale compared with surrounding development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal would permit new development providing residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils are evident on the site. There are no unstable slopes on the site. Severe or steep slopes are stable per the geotechnical report; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the site; No historic assets are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed zoning district would not permit higher density or intensity uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is via Old Heady Road, a secondary collector at this location; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by car. The redevelopment of the site will improve the sidewalk network, improving the

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accessibility of the site via pedestrians and people with disabilities; Transportation Planning has approved the proposal; no direct residential access to high-speed roadways is proposed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, no open space is required by the Land Development Code, but the applicant is preserving open space next to the pond; No karst features are evident on the subject site; the site is not located in the regulatory floodplain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed zoning district would increase the variety of housing types in the neighborhood; The proposed zoning district would support aging in place by increasing the variety of housing in the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed zoning district would permit inter-generational mixed-income development that is connected to the neighborhood and the surrounding area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would increase the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in Louisville Metro; no existing residents will be displaced by the proposal; the proposed zoning district would permit the use of innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4 Single Family Residential to R-5A Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Peterson, Seitz, Sistrunk and Howard

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NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Mims and Lewis

Variance from 5.3.1.C.4 to allow structures in the single-family residential subdivision portion of the site to encroach into the required supplemental setback for a collector road along the future Urton Lane corridor (21-VARIANCE-0052)

On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, the requested variance will not adversely affect public health safety or welfare as the applicant proposes enhanced landscaping along the Urton Lane corridor which will protect the proposed single-family structures from the traffic impacts of Urton Lane, when Urton Lane is constructed in the future; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the enhanced landscaping which is proposed will help to screen the rears of the homes from Urton Lane so that they are not as visible from the future right-of-way; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the encroachment presents no hazards, and any nuisances will be mitigated by the proposed enhanced landscaping; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the proposed enhanced landscaping will mitigate the negative impacts of the encroachment; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the Urton Lane corridor is a proposed future collector-level road which does not exist yet and will not exist for an unknown period of time; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant by requiring the applicant to redesign the lots that have double-frontage on the proposed local street and the future Urton Lane; 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

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zoning regulation from which relief is sought as the variance is being requested and no construction has taken place at this time.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Variance from 5.3.1.C.4 to allow structures in the single-family residential subdivision portion of the site to encroach into the required supplemental setback for a collector road along the future Urton Lane corridor (21-VARIANCE-0052).

The vote was as follows:

YES: Commissioners Carlson, Daniels, Peterson, Seitz, Sistrunk and Howard
NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Mims and Lewis

Variance from 5.3.1.C.4 to allow structures in the multi-family residential portion of the site to encroach into the required supplemental setback for a collector road along the future Urton Lane corridor (21-VARIANCE-0053)

On a motion by Commissioner Carlson, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, the requested variance will not adversely affect public health safety or welfare as the applicant proposes enhanced landscaping along the Urton Lane corridor which will protect the proposed multi-family structures from the traffic impacts of Urton Lane, when Urton Lane is constructed in the future; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the enhanced landscaping which is proposed will help to screen the rears of the multi-family structures from Urton Lane so that they are not as visible from the future right-of-way; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the encroachment presents no hazards, and any nuisances will be mitigated by the proposed enhanced landscaping; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the proposed enhanced landscaping will mitigate the negative impacts of the encroachment; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the Urton Lane

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corridor is a proposed future collector-level road which does not exist yet and will not exist for an unknown period of time; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant by requiring the applicant to redesign the lots that have double-frontage on the proposed local street and the future Urton Lane; 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 as the variance is being requested and no construction has taken place at this time.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Variance from 5.3.1.C.4 to allow structures in the multi-family residential portion of the site to encroach into the required supplemental setback for a collector road along the future Urton Lane corridor (21-VARIANCE-0053).

The vote was as follows:

YES: Commissioners Carlson, Daniels, Peterson, Seitz, Sistrunk and Howard
NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Mims and Lewis

Sidewalk Waiver to omit a required sidewalk along the western side of proposed Street "A" (21- WAIVER-0094)

On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the testimony heard today was adopted.

WHEREAS, the waiver will adversely affect the owners in that they will not have the ability to walk on both sides of the road; and

WHEREAS, granting the waiver will be inconsistent with the Comprehensive land use plan which includes elements concerning connectivity and being healthy because more sidewalks allow for greater connectivity and encourage healthy walking, jogging, bicycling, strollers and other transportation by human power; and

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WHEREAS, the applicant can reasonably comply with other methods of compliance such as through an interval curb configuration or reducing the depth of the adjacent lots and they will still be in excess of minimum requirements; and

WHEREAS, the strict application of the regulation would not deprive the applicant of reasonable use of the land or many of those reasons discussed; and

WHEREAS, there are no site constraints that make the construction of sidewalks impractical.

RESOLVED, that the Louisville Metro Planning Commission does hereby **DENY** the Sidewalk Waiver to omit a required sidewalk along the western side of proposed Street "A" (21- WAIVER-0094).

The vote was as follows:

YES: Commissioners Carlson, Daniels, Peterson and Sistrunk

NO: Commissioners Seitz and Howard

NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Mims and Lewis

Major Preliminary Subdivision with Development Potential Transfer and review of land disturbing activity on slopes greater than 20% (21-MSUB-0010)

On a motion by Commissioner Carlson, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis and testimony from the applicant and staff was adopted.

WHEREAS, a geotechnical analysis was performed and no significant concerns with respect to slope instability or substantial erosion were observed on the site. There are three lots that would have portions of slopes greater than 20% which are likely to be disturbed by home-building activity, however the geotechnical report found no slope instability. The report outlined mitigation and construction procedures to allow for safe development of the site as proposed. Overall, the design and layout appear to be the minimum necessary accommodate the proposed use of the site; and

WHEREAS, the final location of all utilities will be determined prior to the recording of the record subdivision plat. The preliminary location drainage features have received approval from the Metropolitan Sewer District; and

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WHEREAS, the Louisville Metro Planning Commission finds, in general, the provided geotechnical report states that the on-site slopes in the observed areas were stable at the time of observation. It provides that disturbance of slopes should not exceed the limits of evaluation in the report. Construction measures to maintain stability have been provided and should be incorporated into the construction of all new homes and the life of those homes; and

WHEREAS, the Louisville Metro Planning Commission further finds the Comprehensive Plan calls for the integration of natural features into the pattern of development. It also provides that proposals should respect the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems. In general, preliminary soil and slope evaluation demonstrates that the proposal is in conformance with the Comprehensive Plan as construction methods have been provided to minimize property damage and environmental degradation related to disturbance of steep slopes. While some buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes. The applicant has shown limits of disturbance to minimize disturbance of sensitive areas.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Major Preliminary Subdivision with Development Potential Transfer and review of land disturbing activity on slopes greater than 20% (21-MSUB-0010), **SUBJECT** to the following conditions of approval:

Proposed Conditions of Approval (Tract 1)

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.
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.

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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. 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.

c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

d. A minor subdivision plat or legal instrument shall be recorded creating Tracts 1 and 2 and dedicating right-of-way along Old Heady Road as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

e. 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 for Tract 1.

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 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.

7. 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."

8. 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.

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9. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

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. 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.

12. 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.

13. The applicant shall provide language in the deed restrictions notifying lot and/or house purchasers that a future road corridor is planned in the area of the subdivision. The form of such restrictions shall be approved by Planning Commission counsel. The area reserved for future road corridor shown on the approved preliminary plan shall also be shown on the record plat.

14. 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 in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association. 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.

15. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.

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16. At the time the developer turns control of the homeowners' association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners' association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.

17. No residential structures shall be permitted within 250 feet of the edge of pavement of the Gene Snyder Freeway's nearest travel lane.

18. The landscape plan shall be in compliance with Chapter 10 of the LDC but shall include no less vegetation than that shown in the landscape exhibit presented at the July 15, 2021 Planning Commission hearing. Developer shall plant a 6' shrub screen and one Type A tree every 50 linear feet (to match the proposed patio home development's screen) along the future Urton Lane Corridor ROW dedication as shown on the landscaping exhibits presented at the July 15, 2021 hearing. Pursuant to the Declaration of Covenants, Conditions, and Restrictions (CCRs), these plantings shall be maintained by the homeowners (which shall include a specific prohibition against removal), and if not so maintained, shall be maintained by the homeowners' association. Maintenance of these plantings shall specifically include replacement of any dead trees or shrubs. The CCRs shall be reviewed and approved by the Planning Commission legal counsel.

19. The CCRs shall prohibit the lot owners from erecting fences or any other structures in the Urton Lane Corridor ROW, or from taking any other action therein which would constitute dominion and control over the property (including, but not limited to playgrounds, etc.). The homeowners' association shall be responsible for enforcing this restriction contained in the CCRs.

20. Developer shall provide the swale along the western area of proposed Street "A" within the right-of-way abutting the adjacent property, as shown at the July 15, 2021 hearing.

21. Prior to approval of the clearing and grading permit, developer shall consult with Public Works and Transportation Planning to match up the proposed finish grade of the property lines adjoining the future Urton Lane Corridor to the anticipated grade of the future roadway. Public Works and Transportation Planning shall approve the proposed elevations shown on the construction plans along the adjoining property lines.

The vote was as follows:

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YES: Commissioners Carlson, Daniels, Peterson, Seitz, Sistrunk and Howard
NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Mims and Lewis

Detailed District Development Plan with Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis, the staff and applicant's testimony heard today was adopted.

WHEREAS, tree canopy and steep slopes will be largely preserved on the site. No other natural resources are evident on the site. No historic assets are evident on the 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 has approved the preliminary development plan; and

WHEREAS, due to the low proposed density of the development, no open space is required; and

WHEREAS, 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 Louisville Metro Planning Commission finds, the overall site design is compatible with existing and projected future development of the area. The proposed area of rezoning will be largely surrounded by the proposed single-family subdivision. Single-family and multi-family development are compatible; and

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following binding elements:

Binding Elements (Tract 2)

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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. 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. 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.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - d. The materials and design of proposed multi-family structures shall be substantially the same as depicted in the rendering as presented at the July 15, 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.
 - e. A minor subdivision plat or legal instrument shall be recorded creating Tracts 1 and 2 and dedicating right-of-way along Old Heady Road as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
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.

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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. No residential structures shall be permitted within 250 feet of the edge of pavement of the Gene Snyder Freeway's nearest travel lane. 8. The landscape plan shall be in compliance with Chapter 10 of the LDC but shall include no less vegetation than that shown in the landscape exhibit presented at the July 15, 2021 Planning Commission hearing. Developer shall plant a 6' shrub screen and one Type A tree every 50 linear feet (to match the proposed subdivision's screen) along the future Urton Lane Corridor ROW dedication as shown on the landscaping exhibits presented at the July 15, 2021 hearing. Pursuant to the Declaration of Condominium Regime (Declaration), these plantings shall be located in the common areas and maintained/replaced by the condominium association. The Declaration shall be reviewed and approved by the Planning Commission legal counsel.

8. The landscape plan shall be in compliance with Chapter 10 of the LDC but shall include no less vegetation than that shown in the landscape exhibit presented at the July 15, 2021 Planning Commission hearing. Developer shall plant a 6' shrub screen and one Type A tree every 50 linear feet (to match the proposed subdivision's screen) along the future Urton Lane Corridor ROW dedication as shown on the landscaping exhibits presented at the July 15, 2021 hearing. Pursuant to the Declaration of Condominium Regime (Declaration), these plantings shall be located in the common areas and maintained/replaced by the condominium association. The Declaration shall be reviewed and approved by the Planning Commission legal counsel.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Peterson, Seitz, Sistrunk and Howard
NOT PRESENT AND NOT VOTING: Commissioners Brown, Clare, Mims and Lewis