

## Planning Commission

### Staff Report

May 11, 2017



<b>Case No:</b>	16SUBDIV1017
<b>Project Name:</b>	Fincastle Farms
<b>Location:</b>	7607 Wolf Pen Branch Road
<b>Owners:</b>	BIT Debt Holdings, LLC
<b>Applicant:</b>	Fincastle Farms Development 1, LLC
<b>Representative(s):</b>	Dinsmore & Shohl, LLP – Clifford Ashburner
<b>Project Area/Size:</b>	71.25 Acres
<b>Existing Zoning District:</b>	R-1, Single-Family Residential
<b>Existing Form District:</b>	N, Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	16 – Scott Reed
<b>Case Manager:</b>	Joel P. Dock, Planner II

### REQUESTS

- **Major Preliminary Subdivision Plan** to create 18 residential lots
- **Waiver** of Land Development Code (LDC), section 5.8.1.B to not provide sidewalk along Wolf Pen Branch Road
- **Waiver** of LDC, section 7.3.30.B to allow a private road to provide primary access to single-family detached residential lots created by a major subdivision
- **Waiver** of LDC, section 5.9.2.A.1.a.iii to allow the residential block to exceed 1,600 feet in length and be 2,256 feet in length
- **Variance** of LDC, section 5.3.1.C.2 (Table 5.3.2) to reduce the required 75 foot front setback to variable dimensions as shown on the subdivision plan

### CASE SUMMARY

The applicant proposes to create eighteen single-family residential lots in Northeastern Louisville Metro (Lots 1-17 and Tract 1); roughly one-half mile North of Interstate-265 and one mile West of U.S Highway 42. The lots range in size from 1.08 acres (the minimum permitted lot size in an R-1 zoning district) to 10.6 acres. An existing private access easement is being utilized to serve Lots 1 through 7. This easement will be extended to serve the remaining lots. A waiver has been requested to allow the lots to be served by a private access easement in-lieu-of public right-of-way. Additionally, a waiver has been requested to allow this private road to exceed the maximum length of sixteen-hundred feet, ending in a cul-de-sac. Harrods Creek, a perennial blue-line protected waterway, forms the Northern boundary of the subdivision. Lots abutting the waterway are of sufficient size to accommodate the one-hundred foot protected waterway buffer.

Due to the topography on the subject site, the applicant has requested relief from the front yard setback of seventy-five feet in the neighborhood form district in order to move infrastructure and the single family units closer to the roadway on more ideal building envelopes. The setback proposed is variable along the frontage of Lots 1 through 7, and forty feet on the remaining lots.

A sidewalk waiver to not provide sidewalks along Wolf Pen Branch Road has also been requested.

## LAND USE/ZONING DISTRICT/FORM DISTRICT

The subject site is within the R-1, single-family residential zoning district and neighborhood form district. It's surrounded on three sides by R-1, single-family residential within the same form district. Harrods Creek, a blue-line perennial stream, forms the Northern boundary of the subject site and separates the site from an R-4, single-family residential district.

### PREVIOUS CASES ON SITE

10-53-05: Subject site was residual tract of major preliminary subdivision for Harrods Glen (approved 5/18/06)

221-06: Minor Plat to create the exterior boundary of docket 10-53-05 and remove the subject site from Harrods Glen major preliminary subdivision. The minor subdivision was recorded in deed book 9037, page 409. The subject site was recorded as Tract 2.

### INTERESTED PARTY COMMENTS

Planning and Design Services staff and Planning Commission legal counsel have been in communication with John Cox, who represents the property owners at 7501 Wolf Pen Branch Road. Mr. Cox has raised concerns regarding the language of a note on a previously approved minor subdivision plat (221-06) that stated, "There shall be no further subdivision of tract 2 into a greater number of lots"; the use of the existing easement to serve new lots created by major subdivision and proposed infrastructure within the easement; and the lot owner's rights as they relate to authorization of the subdivision of land using the easement for access.

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

#### Wolf Pen Branch Neighborhood Plan

The preservation of the area's character is important to the residents of the Wolf Pen Branch Neighborhood, its surrounding communities and the citizens of Metro Louisville. Both Cornerstone 2020 and the Land Development Code provide broad county-wide land use policies and standards for density, design, buffering and street improvements. The purpose of the Wolf Pen Branch Neighborhood Plan is to identify the special characteristics that make up this unique neighborhood and develop land use policies and standards consistent with its scenic, historic, cultural and environmental heritage.

New development within the neighborhood should conform to the existing scenic roadway alignments, be compatible with the existing rural residential development pattern and safeguard the scenic, environmental, historic and cultural resources of the Wolf Pen Branch Neighborhood.

Mobility recommendation number 6 on page 16 of the plan states that no sidewalks are to be required on existing roadways within the WPBNSA with the exception of interior roads within platted subdivisions. As part of a justification for a sidewalk waiver, alternative pedestrian facilities, such as trails, shall be provided. Such alternatives should avoid the use of curbs and gutters, and should be constructed to minimize impacts on existing trees and wildlife habitat.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**  
Section 5.8.1.B to not provide sidewalk along Wolf Pen Branch Road

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

STAFF: The waiver will not adversely affect adjacent property owners as no sidewalks are provided by nearby development within this right-of-way and the neighborhood plan does not recommend that sidewalks be constructed within this right-of-way.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 8, Policy 12 provides that street design should reflect the special character of each form district. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. As recommended by the Wolf Pen Branch Neighborhood Plan the development provides an internal sidewalk to serve the residential lots which provides a recreational amenity on the rural private road and the movement of pedestrians within the subject site. The omission of the sidewalk at this location on Wolf Pen Branch Road also preserves the rural character of the narrow road and may result in the preservation of additional vegetation within the right-of-way abutting proposed Lot 1.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the request to not provide the sidewalk within the Wolf Pen Branch right-of-way is in keeping with the recommendations of the Wolf Pen Branch Neighborhood Plan to not provide sidewalks along this roadway and to instead only provide sidewalks internal to the subdivision.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

Section 7.3.30.B to allow a private road to provide primary access to single-family detached residential lots created by a major subdivision; **and** Section 5.9.2.A.1.a.iii to allow the residential block to exceed 1,600 feet in length and be 2,256 feet in length

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

STAFF: The waiver will not adversely affect adjacent property owners as the subject site borders a single-family residential development to the West that is served by a private road with no connection to the subject site, the subdivision to the East is built-out with no roadway connection, and the Northern boundary is formed by a protected waterway separating the build-out subdivision opposite the stream from the development site.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 8, Policy 12 provides that street design should reflect the special character of each form district. The private street proposed by this development would not appear to hinder the safe movement of pedestrians or vehicles and would not negatively impact the hierarchy of streets or the connection of neighborhoods as adjacent developments are built-out with no access or stub roadways to the subject site and the private road contains sidewalks. Lots in this subdivision are substantially larger than what is ordinarily provided in standard major subdivisions resulting in a longer private roadway and a pattern that is reflective of the unique rural character of the area.

- (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 the private road provides adequate access to the proposed single-family residential lots and allowing a private roadway would not negatively impact the hierarchy of streets or the connection of neighborhoods as adjacent development is built-out with no connection and the private road contains sidewalks.

- (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: 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 as the roadway is not needed to provide roadway connections to adjacent development and it will not be maintained by the public.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

Section 5.3.1.C.2 (Table 5.3.2) to reduce the required 75 foot front setback to variable dimensions as shown on the subdivision plan

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health safety or welfare as the request is internal to the subdivision and will allow for structures to minimize their impact on natural features and provide a more optimal building envelope related to topography.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the lotting pattern reflects the unique character of this rural area and the request preserves additional natural areas to the rear of future single-family residential homes.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the request would not appear to impact the safe movement of pedestrians or vehicular traffic. The request is being made on a private roadway.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations as no setbacks have been established within the subdivision and the request does not adversely impact public health, safety, or welfare and does not create any hazards or nuisances.

### **ADDITIONAL CONSIDERATIONS:**

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as this site contains steep slopes and allowing the future

homes to be closer to the roadway would allow a more ideal building envelope with less impact on these environmental features.

2. 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.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as a greater setback than proposed would require increased disturbances of natural areas.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: 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.

### **TECHNICAL REVIEW**

The revised major preliminary subdivision plan is in order and has received preliminary approvals from Transportation Planning staff, the Metropolitan Sewer District, and Louisville Metro Health and Wellness.

In 2009 an inquiry was made concerning the note placed on the minor subdivision of record in deed book 9037, Page 409 which stated, "There shall be no further subdivision of tract 2 into a greater number of lots." The Planning Director concluded that "the intention of the note is that no further subdivision may occur without the approval of the Louisville Metro Planning Commission or designee, as provided in the Louisville Metro land Development Code."

Staff initially commented that the owner's signature of the property at 7501 Wolf Pen Branch Road would be required as the lots being created are served by an existing private access easement which resides on the aforementioned property. After considerable discussion, staff determined that the owner's signature was not required as the physical land being proposed for subdivision did not include any subdivision of land on the property located at 7501 Wolf Pen Branch Road.

All applicable zoning regulations, as pertaining to minimum yard requirements, shall be interpreted as being measured from the nearest boundary of the private access easement.

Karst features, sinkholes, have been identified on the preliminary subdivision plan. Lot 11 contains a cluster of ten sinkholes and two additional large sinkholes have been identified at the front of Lot 12. Two sinkholes are located in private access easements. One is located in the easement between Lot 8 and 17. The other is located on a thirty-foot easement serving Lot 14. The remainder of these sinkholes are scattered between Lot 3 through 8. Due to the karst topography indicated on-site a full geotechnical report should be provided for staff review and the recommendations of this report should be incorporated into all construction activities. A condition of approval has been added to satisfy staff concerns related to this item.

### **STAFF CONCLUSIONS**

The Major Preliminary Subdivision Plan, Waivers, and Variance appear to be adequately justified and meet the standard of review based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Planning Commission must determine if the proposal meets the standards established in the LDC for approving Major Preliminary Subdivision Plans, Waivers, and Variances.

## REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Waiver** of LDC, section 5.8.1.B to not provide sidewalk along Wolf Pen Branch Road
- **APPROVE** or **DENY** the **Waiver** of LDC, section 7.3.30.B to allow a private road to provide primary access to single-family detached residential lots created by a major subdivision
- **APPROVE** or **DENY** the **Waiver** of LDC, section 5.9.2.A.1.a.iii to allow the residential block to exceed 1,600 feet in length and be 2,256 feet in length
- **APPROVE** or **DENY** the **Variance** of LDC, section 5.3.1.C.2 (Table 5.3.2) to reduce the required 75 foot front setback to variable dimensions as shown on the subdivision plan
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan**

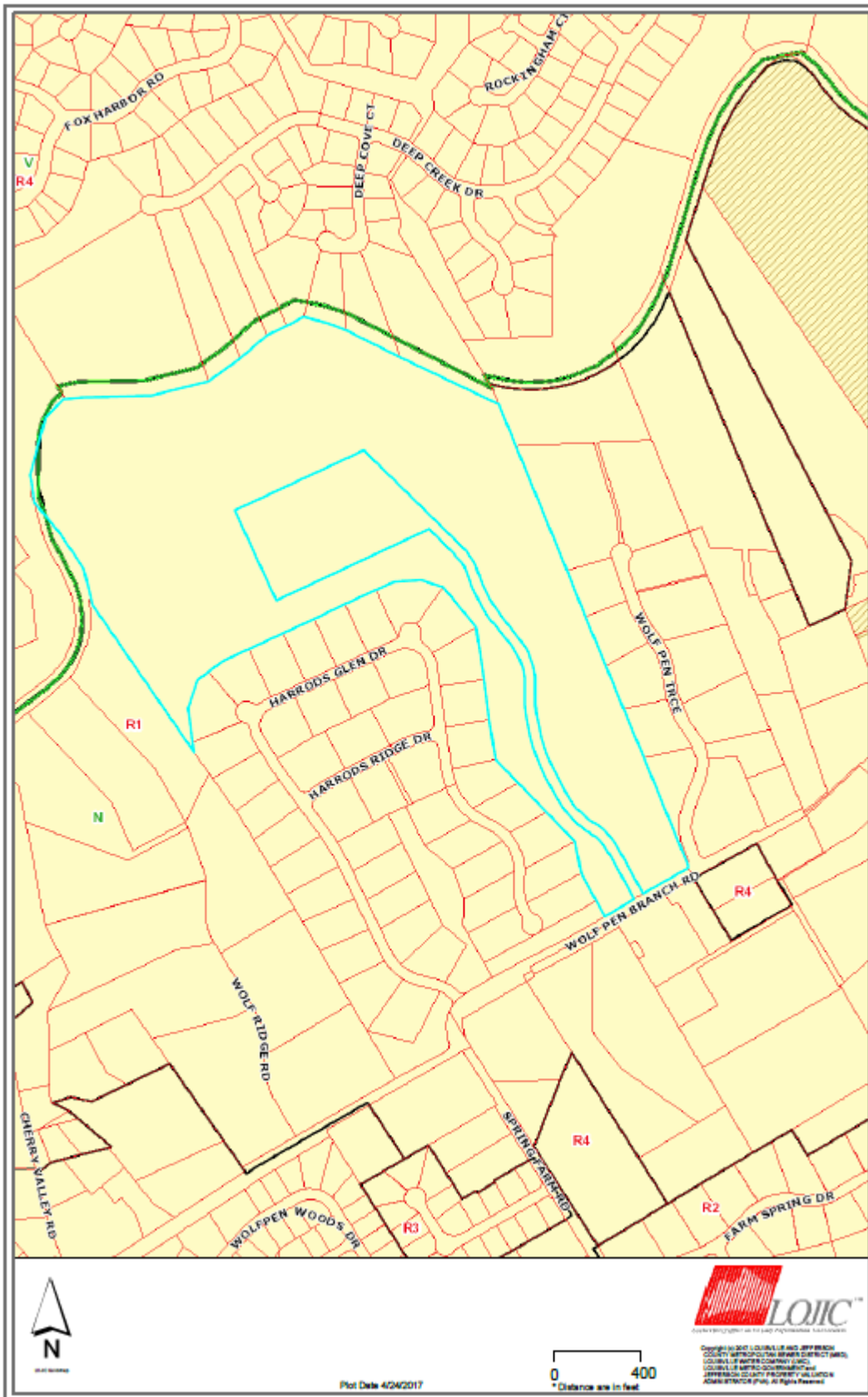
## NOTIFICATION

Date	Purpose of Notice	Recipients
4/21/17	LD&T	Adjoining property owners, applicant, representative, case manager, and registered users of council district 16

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. **Zoning Map**





2. Aerial Photograph





### **3. Proposed Conditions of Approval**

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from Louisville Metro Public Works for any work within the right-of-way.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
3. 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 TCPAs etc.) and other issues required by these conditions of approval.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
4. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
5. All street signs shall be installed by the Developer, and shall conform to 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.
6. Tree Canopy Protection Areas (TCPAs) identified on this plan represent 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 protected. 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 TCPAs 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.
7. 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.
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. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan and construction plan 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. A geotechnical report in accordance with Land Development Code, section 4.9.5 shall be submitted to Planning Commission staff for review and incorporation into the record of this case prior to the recording of the record subdivision plat. Recommendations of the geotechnical report should be incorporated into all land disturbance activities that take place on site.