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ZONING ORDINANCE NO. 8, SERIES 2002

LOUISVILLE & JEFFERSON COUNTY
PLANNING COMMISSION

DOCKET NO. 9-59-01V

AN ORDINANCE CHANGING THE ZONING FROM R-4 SINGLE FAMILY RESIDENTIAL TO R-5A AND R-7 MULTI-FAMILY RESIDENTIAL ON PROPERTY LOCATED AT 6501 OLD NEW CUT ROAD CONTAINING 29.4 ACRES AND BEING IN UNINCORPORATED JEFFERSON COUNTY.

WHEREAS, after a public hearing, the Louisville and Jefferson County Planning Commission recommended by resolution that the requested change in zoning from R-4 Single Family Residential to R-5A and R-7 Multi-Family Residential on property described in the minutes and records of the Planning Commission in Docket No. 9-59-01V be denied for the reasons stated in the aforesaid resolution of the Commission;

WHEREAS, Fiscal Court has reviewed the entire record before the Planning Commission in Docket No. 9-59-01V including the findings and recommendation of the Planning Commission, and does not concur with or adopt the findings of the Planning Commission;

WHEREAS, based on testimony and evidence submitted with the application, in the Staff Report and to the Planning Commission at various meetings, including LD&T Committee meeting and the public hearings, the Fiscal Court finds that the application complies with all applicable guidelines and policies of the Cornerstone 2020 Comprehensive Plan, including Community Form/Land Use Guideline 1.B.3 because the site is located in the Neighborhood Form Area which is characterized by predominantly residential uses that vary from low to high-density; this form area is intended to contain diverse housing types for differing ages and incomes, including the proposed high-density multi-family housing; open space is provided at appropriate locations and is designed to accomplish buffering in order to be compatible with adjacent uses and to blend compatibly with the existing landscape and natural features, including Bee Lick Creek on the east side of the site and the heavily wooded hillside on the western portion of the property;

WHEREAS, Fiscal Court finds the proposal complies with Compatibility Guidelines 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.10, 3.12, 3.14, 3.15, 3.21, 3.23, 3.24 and 3.28 because of the open space design and placement, building design and placement, and landscaping, including Woodland Protection and preservation and enhancement of certain existing vegetive buffers of the proposed development; the developed portion of the site is clustered toward the center to provide a better transition from the lower density development particularly on the north and eastern boundaries of the site; the buildings in the north corner of the site along Old New Cut Road are restricted to two story townhouse units to reduce the mass and scale providing a good transition from adjacent density and to create a visual barrier from the more densely developed center of the site; the nearest apartment building is more than three hundred (300) feet from a single family residence; tree masses along the south, west and east property lines will be maintained; the site slopes up to the west to a heavily wooded area; one story parking garages along the south property line will effectively form a one-story visual barrier that will serve as a buffer for the deep rear yards of the adjacent single family homes existing on Manslick Road; the project will be constructed of a mixture of brick and vinyl which is typical of such structures in this

0002.34

9-59-01V

community; adjacent residences are on large lots with the homes to the front of the lot away from the proposed development; transitions created by tree buffers and single story parking garages and clustering at center mitigate the effects of the higher density of this development; lighting will be directed down and away from adjacent residences; existing residential development is well buffered from the proposed development; adjacent lots along Manslick Road are very deep and the homes are at the front of these lots; a drainage easement, landscape buffer and one story garages separate these lots from the development; and large residential tracts east of the site are well separated as they are on the other side of the crest of the wooded hillside;

WHEREAS, Fiscal Court further finds the proposal complies with Compatibility Guidelines 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.10, 3.12, 3.14, 3.15, 3.21, 3.23, 3.24 and 3.28 because the development is in the Neighborhood Form Area which is characterized by diverse housing types varying from low to high density; this development is well situated along New Cut Road, a collector-level roadway which functions as an arterial, and has easy access to the Gene Snyder Freeway; units located at the southwest portion of the site will be marketed especially to seniors and empty nesters; the development will comply with all ADAAG requirements, including the provision of handicapped parking; relative to other areas of the county, this area lacks high quality multi-family developments that are affordable but yet provide high levels of amenities; the fact that the topography and orientation of the site faces the industrial park and the Gene Snyder interchange as well as the concentration of the units in the center of the site facilitates high quality yet affordable housing with high amenity levels that is compatible with existing development; the sloped wooded hillside to the east, Bee Lick Creek and vegetative buffers to the north and east and the landscape buffers with single story garages along the south boundary provide appropriate transitions between this development to the adjacent land use; along the south boundary the corner of the building nearest to a property line is approximately fifty (50) feet and most of the multi-family units are approximately one hundred (100) feet from the property lines, separated by landscape buffers and single story garages; most of the parking and vehicle maneuvering area in the proposed development is remote from existing development; single story parking garages along the south property line will create a wall effect that will minimize potential adverse impacts of light and noise from vehicle maneuvering and parking; monument style signature entrances will be utilized and no freestanding signage is proposed;

WHEREAS, Fiscal Court finds the proposal complies with Open Space Guidelines 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 because approximately one-half of this 29.4 acre site will be preserved as a Woodland Protection Area and open space which will prevent the destruction and removal of trees in the area; Bee Lick Creek will not be channelized or altered in any way that will affect its natural character; the open space and landscape buffers maintain the woodland character of the site particularly as it abuts the roadway corridors; open space for floodplain compensation areas and recreational amenity areas as well as vegetative buffers form the front of the development site which provide visual and spatial buffers for existing development; the residential units avoid the steeply sloped areas and are oriented to facilitate the natural drainage patterns on site; the club house, volleyball, shuffleboard and tennis courts along Bee Lick Creek create open space and provide amenities within the development; the open space will be

000233

maintained by the developer as an amenity for the residents; and the wooded areas to the rear of the buildings will make those units especially desirable for their privacy and views;

WHEREAS, Fiscal Court finds the proposal is in compliance with Natural Areas and Scenic and Historic Resources Guidelines 5.1, 5.2, 5.3, and 5.6 and Transportation Facility Guideline 8.2 because construction on slopes is avoided and positioned so as to utilize the existing drainage patterns; the Woodland Protection Area will not have any man-made features and will be preserved in its natural state; there will be no development within twenty-five (25) feet of Bee Lick Creek; a tree preservation plan will be provided in addition to the Woodland Protection Area; a geotechnical report prepared by the engineering firm Fuller Mossbarger Scott & May has been submitted which demonstrates that the soils are sufficiently stable and suitable for construction as proposed by the Development Plan; a soil erosion and sedimentation plan will be submitted for review and approval prior to construction; and best management practices will be utilized to prevent siltation in Bee Lick Creek as a result of construction activities;

WHEREAS, Fiscal Court finds the proposal is in compliance with Mobility/Transportation Guidelines 7.1, 7.2, 7.3, 7.4, 7.5, 7.10, and 7.16 and Bicycle, Pedestrian and Transit Guideline 9.1 because the Development Plan has been reviewed and approved by the Jefferson County Department of Public Works as well as the Louisville and Jefferson County Air Pollution Control District; a binding element is included to ensure that necessary roadway improvements are constructed to coincide with phases of construction that eliminate current inadequacies and mitigate the impact of this development; mitigation of traffic impacts will be accomplished by the widening of Old New Cut Road to three (3) full lanes from New Cut Road to the west property line of the subject property and the addition of south bound right turn lane on New Cut Road at the Old New Cut Road intersection; no additional right of way is required; the program of roadway improvements by the Kentucky Department of Transportation of New Cut Road to and beyond the Gene Snyder Freeway are currently underway; and based upon the units proposed six hundred seventy-four (674) parking spaces are required and seven hundred eighty-one (781) are provided to ensure ample parking for residents and their guests as well as for the clubhouse and recreational amenities;

WHEREAS, Fiscal Court finds the proposed development complies with Transportation Facility Guidelines 8.7 and 8.10 and Bicycle, Pedestrian and Transit Guidelines 9.2, 9.3 and 9.4 because adequate sight distances have been provided for the roadway entrances taking into account the traffic speeds, terrain and roadway alignments; the three entrance/exits for the development have been reviewed and approved by the Jefferson County Department of Public Works; the roadway improvements shown on the Development Plan, including the addition of a center turn lane and signalization of Old New Cut Road and New Cut Road, will improve the level of service and traffic flow for left turn lanes onto New Cut Road; the high density of this development is appropriate at this location with easy access to the Gene Snyder Freeway; when fully developed, the adjacent industrial park will provide employment, restaurants and services that will be easily accessible by pedestrians and bicycle users; bicycle stands and benches will be provided at the entrance to each of the multi-family buildings and the clubhouse and other amenities (tennis and volleyball courts); and the interior roadways and vehicle maneuvering

000232

areas are sufficient for bicycle use which will not interfere with pedestrian traffic which is served by sidewalks throughout the development as shown on the development plan;

WHEREAS, Fiscal Court further finds the proposed development complies with Livability/Environment Guidelines 10.5, 10.8 and 10.12 and Water Quality Guidelines 11.3, 11.4 and 11.9 because no alterations to Bee Lick Creek are proposed that would have any impact on its functionality or character; a twenty-five (25) foot vegetative buffer will be maintained from the top of the banks of the creek as required by the Floodplain Management Ordinance; access to the development will be constructed so as to be above the floodplain so flooding will not create a hazard for ingress and egress to and from the development; prior to any construction activity, a retention basin will be created which, during construction, will serve as a sediment pond to prevent any siltation of Bee Lick Creek; siltation controls will also be installed along the creek to further ensure there will be no erosion impact from construction activities; the capacity of this basin is 11.58 acre feet, more than double the amount of compensation required by MSD standards, and results in a net gain of 6.57 acre feet of floodplain storage; soil disturbing construction activity will avoid all of the steep slopes on site; an 11.58 acre feet retention basin and the twenty-five (25) foot vegetative buffer adjacent to Bee Lick Creek will trap any erosion which would otherwise reach the creek; a soil and erosion control plan will be submitted to MSD for review and approval prior to any construction activity; of the total 29.4 acre site, there will be 17.58 acres of green or pervious surface area;

WHEREAS, Fiscal Court finds the proposal complies with Air Quality Guidelines 12.1, 12.2, 12.3 and 12.8 because a trip generation analysis has been submitted to Jefferson County Air Pollution Control District which demonstrates that the proposed development will have no adverse impact on national ambient air quality standards according to review by Tom Pinto, Technical Coordinator APCD by letter dated November 12, 2001; sidewalks are provided both internally and along the adjacent public streets;

WHEREAS, Fiscal Court finds the proposal complies with Landscape Character Guidelines 13.1 through 13.7 because a Woodland Protection Area as designated on the development plan will ensure the preservation of approximately thirteen (13) acres of forested area overlooking this residential community; a tree preservation plan for the construction areas will also be submitted for review and approval prior to construction of improvements; these measures will preserve the character of the site as a hillside woodlands which will continue to be visible from the surrounding area; new landscaping will utilize mature species to enhance existing vegetative buffers; the Woodland Protection Area connected to the existing vegetative buffers will provide a natural corridor providing habitat for a wide variety of wildlife; the Bee Lick Creek buffer and preserved existing landscaping will maintain the wooded corridor along New Cut Road;

WHEREAS, Fiscal Court finds the proposal complies with Community Facilities Guidelines 14.2, 14.3, 14.4, 14.6 and 14.7 because all necessary utilities are available to the site, including potable water and sewerage; and all utilities will be located underground and located to provide access without negative visual impacts; and

000237

WHEREAS, Fiscal Court further finds that the existing zoning classification of the subject property is inappropriate and the proposed classification is appropriate and there have been major changes of an economic, physical and social nature which were not anticipated by the Comprehensive Plan which have substantially altered the basic character of the area;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF JEFFERSON COUNTY, KENTUCKY:

Section 1. That the above property located at 6501 Old New Cut Road in unincorporated Jefferson County and more particularly described in the minutes and records of the Planning Commission in Docket No. 9-59-01V is hereby changed from R-4 Single Family Residential to R-5A and R-7 Multi-Family Residential, provided said property shall be subject to the following Binding Elements:

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The density of the development shall not exceed 14.29 dwelling units per acre (420 units on 29.4 acres).
3. There shall be no freestanding sign permitted on site without prior approval. Monument style signs that meet the size and height limits established in the "Policies for Future Development Along Designated Parkways" may be approved by DPDS staff. Signs that exceed those limits are permitted only if approved by LD&T or the Commission. LD&T or the Planning Commission may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.
4. A signature entrance may be provided at the main entrance(s) in accordance with Section 9.1.A of the Louisville and Jefferson County Development Code. Any freestanding signs in accordance with the parkway designation standards and Article 11 of the Louisville and Jefferson County Development Code may be approved by Planning Commission staff.
5. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
6. There shall be no outdoor storage, display or sales permitted on the site.
7. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a

000230

90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.

8. Construction fencing shall be erected when off-site trees or tree canopy exists within three (3) feet 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. A Tree Preservation Plan shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
10. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
11. 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

000275

unless a revised district development plan is approved or an extension is granted by the Planning Commission.

12. 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.
13. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line or permitted on the site.
14. 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.
15. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
16. The site shall be developed in accordance with the tree 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 preservation areas must contain the following notes:
 - a. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.
 - b. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

000228

- c. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least three (3) feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
 - d. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
 - e. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.
17. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and LD&T action.
18. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:
- a. Woodland Protection Areas (WPAs) identified on this plan represent portions of the site that shall be permanently preserved. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs 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.

000277

- b. Dimension lines have been used on this plan to establish the general location of WPAs and represent the minimum boundary of the designated WPAs. The final boundary for each WPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
 - c. Tree protection fencing shall be erected around all WPAs prior to Site Disturbance Approval to protect the existing tree stands and their root systems. The fencing shall be located at least three (3) feet beyond the edge of the tree canopy and shall remain in place until all construction is completed.
 - d. No parking, material storage or construction activities are permitted within the WPAs.
19. The dumpster shall not be emptied between the hours of 10 p.m. and 7 a.m.
20. Construction drawings for roadways and drainage system will be submitted to a qualified geotechnical engineer for review and approval before beginning construction.
21. During earthwork operations a qualified geotechnical engineer will provide field inspection for the following:
- a. Topsoil stripping;
 - b. Compaction of fill for roadway and overlot grading;
 - c. Proof-rolling roadway subgrade;
 - d. Under drains under pavement where necessary.
22. Foundations shall be approved by a qualified geotechnical engineer before beginning foundation construction of buildings. Also a qualified geotechnical engineer shall inspect the subgrade before beginning construction of foundations.
23. Landscaping for the site shall utilize only native species trees and shrubs.
24. Roadway improvements:
- a. The first one hundred seventy (170) units may begin construction upon receipt of approval of a detailed district development plan and construction drawings. However no certificates of occupancy for these units may be requested until the following roadway improvements are completed by the developer:


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9-59-01V

1. Addition of south bound right turn lane on New Cut Road at Old New Cut Road intersection.
 2. Widening of Old New Cut Road to three (3) lanes from New Cut Road to the west property line of the subject property.
- b. No certificates of occupancy for the next one hundred twenty-five (125) units may be requested until the substantial completion of the New Cut Road widening between Outer Loop and the Gene Snyder Freeway as determined by County Public Works.
- c. No building permits may be obtained for the remaining one hundred twenty-five (125) units until final completion of the New Cut Road widening between Outer Loop and Gene Snyder Freeway.
25. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 20th, 2001 Planning Commission meeting.

Section 2. This Ordinance shall take effect upon passage.

Adopted this 26th day of February, 2002.


 REBECCA JACKSON
 COUNTY JUDGE/EXECUTIVE

ATTEST:


 FISCAL COURT CLERK

APPROVED AS TO FORM AND LEGALITY:
 IRV MAZE
 JEFFERSON COUNTY ATTORNEY


 BY: DEBORAH A. BILITSKI

000225