

PLANNING COMMISSION MINUTES
October 21, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0018

Request: Change in zoning from R-4 to PRD, with Detailed District Development Plan/Major Preliminary Subdivision and Binding Elements

Project Name: Creek's Edge Townhomes

Location: 6806 Applegate Lane

Owner: Pleasant Apple LLC

Applicant: Pleasant Apple LLC

Representative: Bluestone Engineers

Jurisdiction: Louisville Metro

Council District: 23 - James Peden

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

06:49:02 Dante St. Germain presented the case and showed a PowerPoint presentation (See staff report and recording for detailed presentation).

06:54:57 In response to a question from Commissioner Mims, Ms. St. Germain said the gross density is 5.37; the net density is 6.97.

06:55:26 – In response to questions from Joe Reverman, Assistant Director of Planning & Design Services, Ms. St. Germain discussed improvements on Applegate and a binding element that discusses driveways.

The following spoke in support of the request:

Chris Crumpton, Bluestone Engineers, 3703 Taylorsville Road Suite 205, Louisville, KY 40220

Kyle Galloway, 9625 Ormsby Station Road, Louisville, KY 40223

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Summary of testimony of those in support:

06:57:26 Chris Crumpton, the applicant's representative, presented the applicant's case and showed a Power Point presentation (See recording for detailed presentation.)

07:08:23 Kyle Galloway, an applicant's representative, discussed the applicant's justification statement and the project's compliance with the Comprehensive Plan (see recording for detailed presentation.)

07:11:07 In response to questions from Commissioner Carlson, Mr. Crumpton discussed the drainage easement and road extending to the west, to the property line. Mr. Crumpton said that the applicant has requested of Metro Public Works to not extend that road until the western property develops in the future. He said the applicant would agree to a binding element (or note on the plan) stating that the applicant would extend that road as necessary if that property ever develops. Mr. Galloway said that is binding element #20. Mr. Reverman discussed the building of the road in the future; it is public right-of-way.

07:15:01 Commissioner Carlson asked if there will be measures taken to keep people from parking in the alleys. Beth Stuber, with Metro Transportation Planning, said these alleys will be public right-of-way and will be subject to the same enforcement that other alleys are in more traditional neighborhood areas. Mr. Crumpton said an addition to the Covenants & Restrictions (CCR) could be made, and/or a binding element.

07:18:14 In response to another question from Commissioner Carlson, Mr. Crumpton said the detention basin is oversized in an effort to further reduce runoff and address downstream complaints.

07:19:09 Mr. Reverman, Commissioner Carlson, and the applicant's representatives discussed extending the stub road (see recording for detailed discussion.) Mr. Reverman noted that, at neighborhood meetings, the neighbors were concerned about not disturbing the creek unless it becomes necessary. Mr. Crumpton used a slide to point out the location of where the road would stop.

The following spoke neither for nor against the request ("Other")

John Torsky, representing Councilman James Peden, 601 West Jefferson Street, Louisville, KY 40202

Summary of testimony of those neither for nor against:

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07:25:07 John Torsky, representing Councilman James Peden, asked what provisions are in place to ensure that the applicant widens the bridge and the roadway there. He also asked if the residences will be owner-occupied; if the walking paths/trail areas public areas; and if the roads will be public or private?

07:26:38 Ms. Stuber said that, regarding the road widening, the applicant will have to bond it to get construction approval. Ms. St. Germain said the park at the corner of Rochelle and Applegate, as well as the walking trails, will be under the control of the homeowners association to maintain. They decide if those areas will be open to non-site-residents or not. Regarding whether the units will be owner-occupied, she understood that they will be sold but Metro can't mandate that they be owner-occupied (for example, someone could buy a lot and rent it out.) The roads are public.

07:28:16 In response to questions from Mr. Reverman, Mr. Galloway said the owners were open to making that open space available for use by the general public, either via CCR or binding element. Mr. Reverman said that would need to be shown on the record plat when the subdivision is recorded, per the Land Development Code.

07:29:45 In response to a question from Commissioner Howard, Mr. Torsky described the bridge over the creek that was discussed earlier.

07:30:39 Ms. St. Germain, Commissioner Sistrunk, and Mr. Reverman discussed who would be responsible for taking care of the open space and the paths.

The following spoke in opposition to the request:

Melinda Harris, 7812 Rochelle Road, Louisville, KY 40228

Angela LaMaster, 7906 Rochelle Road, Louisville, KY 40228

Summary of testimony of those in opposition:

07:33:04 Melinda Harris said her concerns are traffic; widening of the road and how that could affect her ability to get out of her driveway; and traffic noise. She lives on the corner of Rochelle and Applegate.

07:35:28 Angela LaMaster said that, at a neighborhood meeting a few years ago, no one mentioned a HOA; also, it was stated that these units would not be rented out, they would be sold. She said her property backs up to the development. She said from 6:00 a.m. to 10:00 a.m, there are about 8 buses that come through here. She said the nearby schools are full; any children attending schools would need to take buses. She is also greatly concerned about traffic.

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Rebuttal:

07:37:59 Chris Crumpton delivered rebuttal (see recording for detailed presentation.) He confirmed that road widening would be on the applicant's side of Applegate, on the developer's property.

07:40:36 In response to questions from Commissioner Carlson, Mr. Reverman discussed criteria for requiring an applicant to do a traffic study or put in stop signs. There is a mechanism for requesting changes to existing intersection conditions and asked Ms. Stuber to look into it. Ms. Stuber said that is something Metro Transportation would do.

07:44:40 Ms. LaMaster described traffic issues on her street, and the surrounding area.

Deliberation:

07:47:00 Commissioners' 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

07:54:14 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the proposal is not for higher density or intensity use; and the proposal is not substantially different in scale or intensity or density compared with the development around it; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because The proposal would permit new development providing residential uses; and

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WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because no distinctive cultural features are evident on the site; and no historic assets are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the proposal is not for higher density or intensity zoning; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the development is through areas of similar intensity and density; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by car. Access via bicycle, transit, pedestrians and people with disabilities would be challenging; Transportation Planning has approved the proposal; and no direct residential access to high speed roadways is proposed; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because tree canopy requirements will be met on the site. Some tree canopy around the stream will be preserved; no karst features are evident on the site; and the site is partially located in the floodplain. Development on the floodplain is being avoided; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposal would permit an increase in the variety of housing types in the neighborhood by permitting attached townhouse-style homes in a neighborhood which is largely detached single-family today; and the proposal would support aging in place by providing smaller, lower-cost homes in an established neighborhood, thereby increasing housing choice for persons who may wish to remain in the neighborhood as they age; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposed zoning district would permit inter-generational mixed-income development. The site is connected to the neighborhood and the surrounding area; and the site is in proximity to Outer Loop, a multi-modal transportation corridor, and a commercial corridor providing neighborhood goods and services; and

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WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in the neighborhood, and within Louisville Metro; no existing residents would be displaced by the proposal; and the proposal would permit innovative methods of housing; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-4 Single Family Residential to PRD Planned Residential Development as described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Sistrunk, Daniels, Carlson, Howard, Peterson, Mims, and Lewis.

NOT PRESENT: Commissioners Clare, Seitz, and Brown.

Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements

07:55:28 Before a motion was made, Ms. St. Germain presented tentative changes and additions to binding elements already in the staff report, which the Commission had asked her to draft, as follows:

20. Right-of-way shall be dedicated to the end of proposed Road "B" at the property line with the record plat. The road to the edge of the property line shall be constructed at such time as the lot to the west (currently Parcel ID 065402140000) develops and makes the required roadway connection. Construction of the road shall be the responsibility of the Developer if the lot to the west is developed prior to Developer turning control of the development over to the HOA. Developer shall grade the end of proposed Road "B" so as to facilitate future connectivity, in consultation with the Department of Works. The Louisville Metro Department of Public Works and Highview Fire Department shall review the treatment of the terminus of Road B to ensure that fire apparatus can safely maneuver to turn around.

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18. No driveways shall be permitted on Road "A", Road "B", or Rochelle Road. All driveway access shall be achieved from the alleys.

New binding element #21:

21. The CCR shall include a prohibition on parking in the alleys.

New binding element #22:

22. The area in Open Space 1 to the northeast of the site labeled on the Development Plan as "Walking Trails / Park Rec Space" shall be shown on the record plat as public open space, in compliance with the Land Development Code.

07:58:25 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is somewhat wooded and Pennsylvania Run flows through the western portion of the site. Required tree canopy will be provided. Slopes and tree canopy are being preserved, as is the stream on site; and

WHEREAS, the Commission further finds that 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, the Commission further finds that required common and recreational open space are being provided on the site; and

WHEREAS, the Commission further finds that 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 Commission further finds that the overall site design is in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the neighborhood by permitting townhouse-style development in attached row houses; and

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WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan/Major Preliminary Subdivision Plan, **SUBJECT** to the following binding elements:

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. 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.
3. 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.
4. 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 trees and fences within buffer

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areas 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.

5. 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.

6. 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.

7. A note shall be placed on the preliminary plan, construction plan(s) and the record plat that states, "Construction fencing shall be erected to protect trees on site and 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 areas."

8. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:

- a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
- b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
- c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
- d. Location of construction fencing for each tree/tree mass designated to be preserved.

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9. 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.
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. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
12. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
13. 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.
14. The applicant shall install signs to be located within the public right-of-way at the terminus of Road "B". These signs shall indicate that this street shall, in the future, extend beyond the subject property and connect to roadways on adjacent properties. Such signage and location are subject to the prior approval by the Louisville Metro Public Works Department, and shall be installed prior to release of bonds for the installation of the street infrastructure.
15. 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.

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16. 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.
17. PRD Transfer of Infrastructure Binding Element Covenants, Conditions, and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs, as well as the inclusion of the following requirements: (a) all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities shall be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA"); (b) any shared water meters and property service connections for sanitary sewers shall be the sole responsibility of the HOA; (c) any water, sewer and drainage facilities that cross lot lines shall be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and (d) where attached residences are proposed, easements shall be provided to provide for incidental encroachments, property maintenance and repair.
18. No driveways shall be permitted on Road "A", Road "B", or Rochelle Road. All driveway access shall be achieved from the alleys.
19. Garages and parking pads which are constructed in the rear of any lot shall be built so as to allow for 42' of clearance between the front wall of the garage or front of the pad and the opposite edge of alley pavement.
20. Right-of-way shall be dedicated to the end of proposed Road "B" at the property line with the record plat. The road to the edge of the property line shall be constructed at such time as the lot to the west (currently Parcel ID 065402140000) develops and makes the required roadway connection. Construction of the road shall be the responsibility of the Developer if the lot to the west is developed prior to Developer turning control of the development over to the HOA. Developer shall grade the end of proposed Road "B" so as to facilitate future connectivity, in consultation with the Department of Works. The Louisville Metro Department of Public Works and Highview Fire Department shall review the treatment of the terminus of Road B to ensure that fire apparatus can safely maneuver to turn around.

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21. The CCR shall include a prohibition on parking in the alleys.
22. The area in Open Space 1 to the northeast of the site labeled on the Development Plan as "Walking Trails / Park Rec Space" shall be shown on the record plat as public open space, in compliance with the Land Development Code.

The vote was as follows:

YES: Commissioners Sistrunk, Daniels, Carlson, Howard, Peterson, Mims, and Lewis.

NOT PRESENT: Commissioners Clare, Seitz, and Brown.