

Westover Subdivision Association Opposition to Revised Development Plan

22-ZONE-0075

INTRODUCTION

All community concerns with Renaissance on Broadway are just as present with the revised plan as with the original. The concerns and the development are, in fact, identical. We are expected, however, to believe it is suddenly a “mixed use development” because the applicant highlighted the church on a rendering. This revised plan is unlawful and greatly out of keeping with the community’s expectations after the last vote. The applicant was told to revise their development plan, not create an entire new theory and continue under another section of the Land Development Code. They were told to proceed without the waiver they lost for themselves by failing to engage the community. Instead, they have come up with a Hail Mary attempt to simply sweep all the problems under the rug. It is as if March 16th didn’t happen. They were graciously given a second bite at the apple, but they returned with a grapefruit. Unfortunately for the applicant, the use does not meet the definition for “mixed use” and their attempt should otherwise fail for the complete disregard for the parameters imposed by the Commission at the last hearing.

THE DEVELOPMENT IS NOT MIXED USE

Mixed Use development is not defined in the Land Development Code, which is an unfortunate oversight given the wide latitude the Code grants developers implementing such worthy projects. Perhaps the treatment is so loose because such plans are exceedingly rare, typically massive in scope, and usually full of desirable amenities for a neighborhood.

Plan 2040 defines “Mixed Use” development as follows:

Mixed Use: Properties on which various uses, such as office, commercial, institutional, and residential are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design. A “single site” may include contiguous properties.

While the definition is broad, it is not so broad as to encompass this development. There are three definitional hurdles this project cannot overcome:

1. “Various” is usually associated with some mix greater than two. This site is a church and an apartment, and only the multi-family structure is being developed. One may advertise, for example, there are various cheeses for sale, but they would risk angry disappointment if they meant “only two” cheeses. Especially if neither on offer was particularly exotic.
2. The plan does not present an “Integrated development project.” This is a church that programmatically will add a real estate management contractor and possibly some social workers. The architectural

cohesion does not make up for the new development being connected to the church by little more than parking and a driveway. Potentially adding members to the church also fails to provide the cohesion. Furthermore, the church is already standing. It is not part of a development project, but is being recruited last minute as part of this “development project,” which we all knew was really just the new apartments.

3. There is no “significant functional interrelationship.” The church urges it will provide wrap around services, but merely administering services from one building to another is not similar to prototypical functional interrelationships found in true mixed use development. In true mixed use there is a mingling of public and private uses. Will walking across a parking lot to a church form this functional relationship? Is collecting rent the nexus?

The absurdity of allowing this development to be considered mixed use is accentuated by comparing it to other mixed use developments currently being discussed. Underhill Associates proposes turning the historic Starks building into 260 apartments with a restaurant, a bar, studios, and a performance space. The design is unified by a theme of performing arts. Vintage S Development, Inc proposes a 32 acre project that will create apartments, retail, a hotel, and other commercial uses on the edge of Old Louisville. Quadrant Group proposes a 4 acre redevelopment that will incorporate retail, restaurants, office space, and an attractive outdoor seating area with a fountain.

All of these developments incorporate a true “variety” of uses. Notably, all of them invite the public to use public amenities. People may join a faith family in ones or twos, but certainly not in the way one walks into a restaurant. Perhaps the creation of public goods is part of why the Land Development Code grants such significant latitude to bona fide developments. True mixed use is an amenity. Additionally, each of these projects dwarfs the mere addition of 42 housing units to a church. This applicant should not be allowed to make a mockery of the plain meaning of our land use laws and the shared understanding those laws sought to capture.

PROCEDURAL IRREGULARITIES

After the vote to deny a waiver of the traditional neighborhood form, discussion turned to what that would mean for the applicant. Ms. Williams, a member of planning staff, opined it meant that the building would have to comply with the four traditional areas of traditional neighborhood form design.

To preserve the record, as it is not apparent on the recording, Mr. Baker, the applicant’s attorney, then had a private sidebar conversation with Ms. Emily Liu of Louisville Metro Planning. Recollections differ as to whether Mr. Baker or Ms. Liu initiated this conversation. However, at the end of that conversation, Ms. Liu announced the applicant would like to revise the development plan and resubmit. This conversation was *ex parte*

communication once removed. It was highly irregular in the context of the Planning Commission closing the meeting to comment from the public. It was unfair to members of the community who participated in good faith—especially after the Commission allowed the applicant to continue testifying for approximately 45 minutes when public comment was re-opened solely to determine whether the applicant wanted to try to address community concerns. They did not. The community was granted no such additional testimony. Community members were forced to remain silent after hearing perjured testimony about their significant volunteer efforts sustained since May, 2022 when the process began. Efforts they sustained out of love of their neighborhood.

No rules of civil procedure allow for simultaneous objection to such communication, and in the context of the conversation about remedies it seemed like the advantage gained by the unlawful act was slight. However, in the context of the applicant's action—especially considering subsequent planning staff assistance in finding a new chapter of the LDC to allow the building—the action was highly prejudicial. Counsel for Westover also approached, but was not granted an audience with Ms. Liu.

Once Ms. Liu stated Mr. Baker's position, thereby saving a failed application, a commissioner accurately stated that he had given the applicant a chance to re-apply. The applicant had said that would not work for them, it essentially killed the project. After the vote had not gone their way, the applicant changed their mind. Mr. Mims stated that they would have to come back with a development plan compliant with the denial of

the traditional neighborhood form waiver, which constituted the largest departure from the LDC and Plan 2040. This communication was integrated into the motion to allow the continuance and should be binding on the applicant. The grace extended by the Commission extended to modifying the site plan to comply with LDC 5.4.1. The applicant is now not even talking about the same site the Commission told them to redesign.

Allowing the applicant to switch chapters also renders the decision to modify the zoning arbitrary and capricious. The Commission intended to look at a plan that had an apartment, not a church, parking lot, and high-rise apartment masquerading as mixed-use development. Commissioners may have withheld their re-zoning votes if they had known they were going to allow exactly the structure they made impossible minutes later with their vote on the waiver. The action was taken on a plan for the site of the proposed multi-family structure, not the larger site the applicant now advances.

CONCLUSION

The Westover Subdivision Association respectfully requests this Commission deny approval of the revised development plan. The applicant has disrespected the Commission and the community with their legalistic sleight of hand. The applicant had its fate in its own hands since May of 2022. They knew the community knew this structure did not fit in their neighborhood, but they believed they could use this process to force the

development through despite legitimate objections. This Commission wisely stopped that effort on March 16th. Commissioners should again refuse this applicant permission to sidestep our land use laws.

Respectfully submitted,

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