

PLANNING COMMISSION MINUTES
July 16, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0052

Request: Change in zoning from R-5 to R-6 with detailed plan and review of substandard lot creation
Project Name: 308 Franck Avenue
Location: 308 Franck Avenue
Owner: Ryan Fagan
Applicant: Ryan Fagan
Representative: Ryan Fagan
Jurisdiction: Louisville Metro
Council District: 9 – Bill Hollander
Case Manager: Joel P. Dock, 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:

01:51:05 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Ryan Fagan,
Beth Mack, 2030 Frankfort Avenue, Louisville, Ky.
Palmer Cole

Summary of testimony of those in favor:

01:56:45 Mr. Fagan stated the lot will be split and sold to Mr. and Mrs. Mack. The Mack's want to build their dream home.

01:57:35 Mrs. Mack explained that her health issues are causing her to build a home so as not to have to deal with mold which is in a lot of older homes. The construction will be performed as safely as possible.

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Mrs. Mack said she will pay for a foundation inspection for the neighbors surrounding the lot – 313, 317 and 319 S. Galt and 306, 308 and 310 Franck Ave. (prior to construction).

02:02:26 Chair Jarboe stated that the foundation inspection will need to be put into a binding element. Mr. Dock said some people may refuse the inspection and there's been past binding elements to address it, language as follows: A written notice to inspect shall be given 30 days in advance and if a response isn't received within 30 days, that's considered a refusal.

02:04:30 Commissioner Seitz asked after the inspection and there's been some damage, are you going to pay for the damages? Mrs. Mack said if there is a discrepancy, the builder's liability should pay. Commissioner Peterson said Mrs. Mack needs to be sure that is in place and add it to the binding element as well. Mr. Dock said he advises against that.

02:07:39 Mr. Cole said he's built in plenty of developments and has a lot of experience. He's never had this issue before.

02:09:11 Ms. Ferguson, Assistant County Attorney, stated if there is damage, it would be a dispute between the insurance company, builder, etc. The Planning Commission and Planning and Design Services are not a part of it. The offer of the inspection can be in the binding element, but not liability issues.

The following spoke in opposition to this request:

Ann Tichenor, 353 South Galt, Louisville, Ky.
Ruth Durbin, 309 Franck Avenue, Louisville, Ky.
Anne Roberts, 209 South Galt Avenue, Louisville, Ky.
Kim McCabe, 321 South Galt, Louisville, Ky.

Summary of testimony of those in opposition:

02:10:27 Ms. Tichenor said her home is not included in the foundation inspection offered to other neighbors.

Ms. Tichenor stated she objects to any kind of land disturbance and if there's any disturbance to her foundation, she will take legal action. The builder hasn't thought out liability issues or the scope of damage possibly done to neighbors. There are other lots that are not at high risk for causing disturbance to neighbors.

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02:13:35 Ms. Durbin stated she is concerned about construction issues and the quality of the streets and sewers. Also, the down-zoning done years ago is what makes Crescent Hill desirable. If you like the area, why change it? The applicant's health should not be a deciding factor.

02:16:35 Ms. Roberts stated there's a limestone shelf that runs down the area where they want to build. There's a real delicate balance and disturbing the limestone may cause water damage to the basements. There's a lot of traffic on S. Galt currently. There are other places in the area to build.

02:19:45 Ms. McCabe stated she's opposed to the proposal in every way and has sustained foundation damage in the past. Allowing one home owner in the middle of R-5 designation to zone up to R-6, because they have an opportunity to make some money, is not why she purchased a house in this neighborhood.

02:23:01 Commissioner Carlson asked Ms. Tichenor what she meant by land disturbance and how far away she is from the proposed project. Ms. Tichenor said the area is fragile but she can't tell you what type of land disturbance will cause damage. The disruption required to build the residential home as proposed by the architect is what she was referring to as land disturbance. Also, Ms. Tichenor lives within half a mile of the proposed site.

Rebuttal

02:26:07 Mr. Fagan said he is a Structural Engineer and deals with construction close to homes quite often. He hasn't experienced any foundation or structural damage to anyone 7 houses away. The homes to worry about would be the ones adjacent to the site.

02:27:15 Mrs. Mack said she wasn't trying to influence the commissioners with her health issues. She takes the concerns of the neighbors seriously.

02:28:03 Commissioner Carlson asked if there is any limestone in the way of the proposed building. Mr. Cole said he hasn't disturbed anything or done any testing to date.

02:29:24 Mrs. Mack asked Mr. Fagan if there was a geological sounding survey performed on the lot in the past week. Mr. Fagan said yes, but he has no results from Mr. Cole.

02:30:28 Mr. Dock said he would like to handle the binding elements similar to the ones used for development on steep slopes. There will be an evaluation of the first tier

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properties and the Structural Engineer will provide a 'best practices' for construction sheet for Planning and Design to incorporate it into the record. The binding element will read as follows: A Structural Engineer shall be hired and an evaluation shall be performed of first tier property. The engineer shall lay out best practices for construction and provide those to Planning and Design Services for incorporation into the record. Notice of intent to evaluate first tier properties shall be provided 30 days advance. Ms. Ferguson agrees with the proposed binding element.

02:33:07 Commissioner Howard suggests adding the proposed binding element to number 2. Mr. Dock agrees.

02:34:01 Commissioner Mims stated, it looks like there's a pattern for subdividing these double frontage lots. Has that occurred recently? Mr. Dock explained, the southern 60% of Galt Ave. leading down to the cul-de-sac was platted subdivision and the northern was deeded subdivision. The platted lots were recorded in that manor and the deeded lots appeared to be recorded in that manor, but it can't be confirmed.

Commissioner Mims asked why R-5A won't work for this proposal. Mr. Dock said it won't work because of the density.

Deliberation

02:38:20 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-5 to R-6

On a motion by Commissioner Lewis, seconded by Commissioner Peterson, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district is in keeping with the existing density along the block-face of both Franck and Galt Avenues. The proposed district encourages infill development near transportation, employment, and amenities; and uses adjacent to the proposed district are similar in their existing density and pattern of development. No transitions are needed between sites having

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two dwellings and those having one. The proposal will provide development that resembles the existing pattern.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal provides for residential living comparable to the historic lotting patterns of the two blocks and the neighborhood. If two single-family dwellings are not constructed, the site is appropriately located for duplex and/or missing middle housing which is also consistent with the neighborhood.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the site does not appear to possess any issues related to wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the proposal provides for the use of the property in a historical context to provide smaller lotting patterns and/or missing middle housing consistent with the area; and existing structures will be used and the proposed district allows for additional density at an appropriate location.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed district is in keeping with the existing density along the block-face of both Franck and Galt Avenues. The proposed district encourages infill development near transportation, employment, and amenities.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site does not create a nuisance as the proposed district will be developed to reflect existing neighborhood conditions, whether for two detached dwellings or duplex.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district is easily accessible by bicycle, car, transit, pedestrians and people with disabilities as the area is well-connected and walkable; existing roadway infrastructure, in conjunction with multiple modal transport options is adequate to support a wide range of densities; the proposal will share in the cost of improvements that are proportional to the zoning district being requested; the developer will provide adequate funds to facilitate sidewalk improvements in the council district; no transportation improvements would appear to be occurring along Galt Avenue that impact the subject property or greater area; no access to high speed roadways is provided.

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the proposal is in an area served by existing utilities or planned for utilities. The subject site is in the urban services district; the proposal has access to an adequate supply of potable water and water for fire-fighting purposes. The subject site is located in the urban services district; and adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD) is provided as preliminary approval has been received.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, minimum standards for tree canopy will be provided; the site is being developed in an infill context and all permits will be acquired; and the zoning district does not impact the integrity of the floodplain as all MSD requirements will be met and the site is not within the floodplain.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed district allows a lotting pattern which is consistent with the historic patterns as evidenced in PB 4, PG 46, as well as allowing for duplex/missing middle housing. If two detached homes are not constructed and duplex is appropriate. Housing will reflect the form and the area; and the proposed district allows for a variety of housing options in a well-connected urban neighborhood with a variety of amenities. The subject site is located close to shopping and transit routes, and medical and other supportive facilities.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed district allows for a variety of housing options including mixed-income and mixed-use development that is connected to the neighborhood and surrounding area; and the proposed district is located within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. It is located within close proximity to transit corridors and commercial corridor.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal helps to create appropriately zoned inclusive housing. Through duplex or smaller lots, the district expands opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro; the proposed district allows for an appropriate level of density in an area that is well-connected for multi-modal transportation to jobs, services, and recreation. No residents will be displaced and additional residential infill

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development will allow residents within an urban area; and the proposal helps to create appropriately zoned inclusive housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to R-6, Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Brown

Detailed District Development Plan with review for substandard lot creation (Land Development Code, section 7.1.85)

On a motion by Commissioner Lewis, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be conserved and historic lotting patterns will be provided to encourage infill development at appropriate locations; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided as a fee-in-lieu will be provided or sidewalks constructed to provide connectivity to services and amenities, as well as employment within the neighborhood; and

WHEREAS, the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided. Each site will maintain private yards and each site conforms to the residential site design standards contained in the Land Development Code; 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

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WHEREAS, the Louisville Metro Planning Commission finds, the proposal is compatible with the scale and site design of nearby existing development and with the form district's pattern of development as the proposal is in keeping with the existing density along the block-faces of both Franck and Galt Avenues and encourages infill development near transportation, employment, and other services and amenities. The proposal also provides for residential housing options comparable to the historic lotting patterns of the two blocks as evidenced in PB 4, PG 46 and the overall neighborhood; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040. The proposal provides for residential housing options comparable to the historic lotting patterns of the two blocks as evidenced in PB 4, PG 46 and the overall neighborhood. The proposal encourages infill development near transportation, employment, and other services and amenities.

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

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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat shall be approved by Planning and Design Services staff and recorded creating the lot lines as shown on the approved development plan.
 - c. A Structural Engineer shall be retained and an evaluation of first tier foundations shall be performed. Notice of intent to evaluate these foundations shall be provided 30 days advance. The engineer shall lay out best practices for construction and provide those to Planning and Design Services for incorporation into the record.
3. 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

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implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

4. 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.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Brown