

**Planning Commission Minutes
August 20, 2015**

Public Hearing

Case No. 15ZONE1015

Request: Change in zoning from RR Rural Residential to R-5A Multi-Family Residential; Detailed District Development Plan, Binding Elements, Floyds Fork Overlay, and Waivers

Project Name: Brentwood Commons

Location: 10509 Bardstown Bluff Road

Owner: Gina and Darrell Nice
10509 Bardstown Bluff Road
Louisville, KY 40291

Applicant: James E. Frey
Redwood Acquisitions, Inc.
23775 Commerce Park Suite 5
Beachwood, OH 44122

Representatives: William Bardenwerper
Bardenwerper Talbott & Roberts PLLC
1000 North Hurstbourne Parkway 2nd Floor
Louisville, KY 40223

Engineer/Designer: Kathy Linares
Mindel Scott & Associates, Inc.
5151 Jefferson Boulevard Suite 101
Louisville, KY 40219

Jurisdiction: Louisville Metro

Council District: 20 – Stuart Benson

Case Manager: **David B. Wagner, Planner II**

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.)

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Agency Testimony:

00:36:33 David Wagner presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:43:00 Mr. Wagner summarized the Interested Party comments that had been received (see recording and staff's Power Point presentation for complete list of concerns.)

00:48:46 Commissioner Jarboe asked for clarification as to why the Waiver request would not be justified according to the staff report. Staff has recommended a pedestrian path, although Metro Parks and 21st Century Parks do not desire that connection.

00:51:50 In response to some Commissioners' questions about the floodplain, Mr. Wagner said the Corps of Engineers will be involved in floodplain construction.

The following spoke in favor of the proposal:

William Bardenwerper, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway 2nd Floor, Louisville, KY 40223

David Mindel and Kathy Linares, Mindel Scott & Associates, Inc., 5151 Jefferson Boulevard Suite 101, Louisville, KY 40219

James Frey, 5311 Gillen Way, Westerville, OH 43082

Diane Zimmerman, Jacobs Engineering, 11940 Highway 42, Louisville, KY 40026

Summary of testimony of those in favor:

00:52:42 William Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

01:02:56 David Mindel, an applicant's representative, discussed the two separate buffers/setbacks and the floodplains. He also described what kinds of requirements must be met by which regulatory agencies for floodplain work.

01:11:45 Diane Zimmerman, with Jacobs Engineering, summarized the trip generation and distribution study.

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01:13:50 The width of the road leading into the development, and also the depth of the fill, were discussed. Mr. Bardenwerper said the applicant would agree to make sure the road would be widened if it was less than 18 feet.

The following spoke in opposition to the proposal:

David Miller, 10207 Bardstown Bluff Rd., Louisville, KY 40291

Billy Seabolt, 10503 Bardstown Bluff Rd., Louisville, KY 40291

Denis and Grace Bryan, 10505 Bardstown Bluff Rd., Louisville, KY 40291

Jeff Hurst, 12501 Oakland Hills Trail, Louisville, KY 40291

Todd O'Neil, 11506 Hickory Bend Hollow, Louisville, KY 40291

Summary of testimony of those in opposition:

01:15:28 David Miller spoke in opposition and specifically expressed concern about protecting Floyds Fork from trash and pollution. He said the applicant has not proven any need for these homes and that nearby developments are trying to fill their vacancies. He also discussed flooding issues.

01:22:13 Bill Seabolt spoke against the project design. He also discussed the importance of preserving greenspace, flooding issues, density issues, the unmaintained roads, and said the Commission had already been shown pictures showing the entire property under water. He said the proposed rental prices of the units are far too high.

01:30:10 Denis Bryan, an adjoining property owner, expressed great concern about digging and development along the creek and changing floodplains. He said the Corps of Engineers needs to look at the changed velocity of the creek and how it is affecting the new bridges; he claims flooding is becoming more violent and damaging. He said surface drainage hasn't been discussed yet. He said none of the traffic studies were done when school was in session, instead of during the summer.

01:39:01 Grace Bryan reviewed the Cornerstone 2020 checklist in the staff report. She questioned whether the Commission has enough accurate data to make an informed decision, and cited items that needed more data or had received a minus on the checklist. She was particularly concerned about traffic accidents and reckless driving on this stretch of road; compatibility; building in

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the floodplain; the dangers of moving the floodplain; and the ensuing risks to renters and wildlife.

01:59:39 Jeff Hurst said that school starting would cause the results of the traffic study to "dramatically change". He asked if Section 8 housing would be allowed in these rental units. He also discussed flooding on the site, and said that this rezoning would set a precedent in the area.

02:02:34 Todd O'Neil spoke in opposition and said he is very concerned about the accuracy of the traffic report. He said there are five schools that were not being accounted for in the summertime traffic study. He also expressed concern about disturbing Floyds Fork and the flooding.

The following spoke neither for nor against the proposal:

No one.

Rebuttal:

02:05:21 Mr. Bardenwerper resumed the podium for rebuttal. He said the flooding and traffic concerns had been addressed per regulatory requirements. He also said the Cornerstone 2020 checklist is for guidance. He stated that the project will not be built in the floodplain, and that developers are allowed to build in the floodplain within regulations. He said one of the ideas of 21st Century Parks is to encourage development in close proximity to the park. He addressed rentals.

02:15:00 Mr. Mindel said he and the applicant had met with Teena Halbig, Past President of the Floyds Fork Environmental Association, and Steve and Heather French Henry, several times to discuss the project.

02:18:09 Commissioner White said he had visited the site, and said he witnessed 12-14 ft of water in the basin. Mr. Mindel addressed the issue.

02:20:09 Commissioner Lewis asked about connection to the parks.

02:21:30 Commissioner Blake asked Ms. Zimmerman about traffic on Bardstown Bluff, as opposed to Bardstown Road.

02:23:03 Tony Kelly, representing MSD, discussed the Floodplain Ordinance and why there is no detention basin on this site. He added that the developer will

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have to prove that this project will not back up water onto adjacent properties. He also discussed sanitary sewers.

Deliberation:

02:26:04 Commissioner's 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

02:43:32 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1 – Community Form**. The subject property lies within the Neighborhood Form District and is located just south of the intersection of Bardstown Road and Bardstown Bluff Road. The site's location provides opportunities for residents to gain easy access to the new Parklands of Floyds Fork Park that addresses an essential goal of the Parklands project, which is to provide easy walking and biking access to all demographic and income groups to the new park. Also this community near Bardstown Road ensures easy access to Bullitt County to the south and to the Gene Snyder Freeway and the Fern Creek Town Center to the north. Major commercial land uses in close proximity to the subject property also include the Bardstown Road commercial corridor south of the Snyder Freeway. Buildings will be constructed of durable building materials (brick and "duralast" lap siding) and will feature architectural details similar to those in other nearby residential neighborhoods. Perimeter setbacks and landscape buffer areas are provided along all property lines as required by the Land Development Code (LDC). These features will screen and buffer resident activities from adjoining property owners; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 2 – Centers**. The proposed community conforms with the overall Intents of and specifically with Policies 4, 5, 12 and 14 of Guideline 2 for all the reasons listed above and because it will make efficient use of available property that lies within the Neighborhood Form District and is located in an area where

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residents currently seek new housing options that have easy access to the Bardstown Road commercial center. Future residents will also support the businesses and services in nearby activity centers north and south of the Snyder Freeway along Bardstown Road; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 3 – Compatibility**. The proposed community conforms with the overall Intents of Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 21, 22, 23, and 28 of Guideline 3 for all the reasons described above and because this proposed community is in a low density range comparable to other R-4 residential communities. Buildings will be one-story in height and constructed with building materials comparable to residential communities in the area. Perimeter landscaping, screening and buffering is provided along all property lines. Buildings are oriented toward internal streets, and garages and driveways are in the fronts of each building, in order to keep resident activities away from adjoining properties; and

WHEREAS, the Commission further finds that sidewalks will be provided where required, and accommodations will be made for pedestrian and bicycle transportation as well as the handicapped and elderly. Odor and air quality concerns related to traffic congestion or delay will be mitigated by the fact that this is a low density residential development and that internal road and sidewalk are efficiently organized to control traffic flow and prevent delays. Refuse will be picked up on a regular basis. Lighting will be residential in character and directed down and away from adjoining properties in conformance with LDC regulations. All signage will be in conformance with Land Development Code regulations; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guidelines 4 and 5 – Open Space / Natural Areas and Scenic and Historic Resources**. The proposed community conforms with the overall Intents of and specifically with Policies 1, 3, 5, 6 & 7 of Guideline 4 and with the Intents of Guideline 5 for all the reasons described above and because it will feature significant open space interspersed among the buildings, parking areas and streets. That open space plus the significant open area along Floyds Fork will be available for the passive recreational enjoyment by residents and will serve to provide natural areas and an overall positive appearance for the community. Landscaping will also be provided along property perimeters, along street frontages and around buildings. Setbacks and buffers along property lines will ensure good transitions between the proposed community and existing land uses. Maintenance of landscaping, natural and open space areas will be performed by the corporate landlord of this for-lease community. This maintenance arrangement will result in a higher and more consistent level of

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maintenance of the open spaces than if the property were developed as a single-family subdivision; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 6 – Marketplace**. The proposed community conforms with the overall Intents of and specifically with Policies 1, 2 and 6 of Guideline 6 because future residents will support and be supported by the businesses, services, schools and churches in and around nearby activity centers. This proposal also reduces public costs for land development by utilizing connections to existing infrastructure for water, sewer, electric and phone services. The community, as proposed, will have easy access to Bardstown Road and 1-265 and several other roads in the area, and from there to the Parklands of Floyds Fork and to greater Louisville employment and commercial centers; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guidelines 7 (Circulation); 8 (Transportation Facility Design); and 9 (Bicycle, Pedestrian and Transit)**. The proposed community conforms with the overall Intents and applicable Policies of Guidelines 7, 8 and 9 because the proposed Detailed District Development Plan (DDDP) has been designed in conformance with all Metro Public Works and Transportation Planning design policies. Good internal circulation, appropriate access, sight distances, corner clearances and parking are provided. Bardstown Road has more than adequate traffic-carrying capacity. Sidewalks will be provided where required; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guidelines 10, 11, and 12 – Flooding and Stormwater, Water Quality, and Air Quality**. The proposed community conforms with the overall Intents and applicable Policies of Guidelines 10, 11 and 12 because, although a portion of the site lies within the 100 year floodplain, MSD Floodplain regulatory requirements for cut, fill and compensation. All drainage will comply with storm water management requirements, and this DDDP will receive preliminary approval by MSD prior to docketing for LD&T review. Louisville Water Company will provide water to the site. A soil erosion and sediment control plan will also be implemented to further manage sediment and drainage during construction. MSD water quality regulatory requirements will also be addressed. Air quality will remain at good levels because , as noted above, this is a low density development with easy access to major roads and the Parklands at Floyds Fork; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 13 – Landscape Character**. The proposed community conforms with the overall Intents and applicable policies of Guideline 13 because landscaping

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will be provided around buildings, along the Bardstown Road entrance and frontage, along internal streets, and along property perimeters as noted above. Significant open space has been preserved for a positive natural appearance and for passive recreational enjoyment by residents. Tree canopy requirements have been met, as noted on the DDDP; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 14 – Infrastructure**. The proposed community conforms with the overall Intents and applicable Policies of Guideline 14 because, as noted above, water, sewer, electric and phone connections are available by nearby connection to ensure a reduced cost for infrastructure; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in Zoning from RR to R-5A for Multi-Family Residential be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, White, Tomes, Peterson, and Lewis.

NO: Commissioner Proffitt.

NOT PRESENT: Commissioners Turner and Kirchdorfer.

ABSTAINING: No one.

Waiver

02:44:38 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because this waiver is applied for pursuant to request of Metro Parks, which is involved with the Parklands of Floyds Fork along the south property line where this waiver is requested; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of

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Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; and

WHEREAS, the Commission further finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because it is not asking for other connectivity waivers apart from this one advised by Metro Parks, and a sidewalk connection along Bardstown Road to the future access to the Parklands of Floyds Fork is provided; and

WHEREAS, the Commission further finds that 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 because without this waiver the applicant's plan would conflict with the design preferences of Metro Parks; and

WHEREAS, the Commission further finds that the proposed multi-use path being constructed along the Bardstown Road right-of-way that abuts the property will serve as the main access point into the adjoining parkland; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented and the applicant's justification and that all of the other applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver #1 from LDC 5.9.2.A.1.a.v to not provide a pedestrian path connection to the adjacent 21st Century Parks lot to the south.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, White, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner and Kirchdorfer.

ABSTAINING: No one.

Detailed District Development Plan, Binding Elements, and Floyds Fork Overlay Review

02:45:45 On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the key natural and scenic area on the site is Floyds Fork. The proposal provides extensive buffers and setbacks in excess of what is required per the Land Development Code. Tree canopy is also being preserved along the stream bank to help mitigate any adverse impacts of the development on the protected stream; and

WHEREAS, the Commission further finds that an internal roadway has been provided throughout the site and vehicular traffic is being directed onto the local level roadway that accesses the site, preventing traffic from being deposited directly onto a major arterial level roadway. An internal walkway has also been provided for the future residents of the development; and

WHEREAS, the Commission further finds that, since open space is not required for this proposal, appropriate open space has been provided for this development as required by LDC regulations; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 and land uses are compatible with the existing and future development of the area. Surrounding lots are used for residential dwellings and although the site introduces another housing style to the area, the buildings are clustered at the center of the site away from nearby residences. Adequate screening and landscaping already exists or will be provided; and

WHEREAS, the Commission further finds that the proposal for a patio home-style community in the vicinity of Floyds Fork meets or exceeds all the Floyd's Fork DRO guidelines concerning residential development; and

WHEREAS, the Commission further finds that filling is proposed in the floodplain, but regulatory compensation will be provided; and

WHEREAS, the Commission further finds that there will be no homes located on or near 20% or greater slopes, and grading and soil compaction should not affect preserved areas. Significant open space is retained; and

WHEREAS, the Commission further finds that, because of the sizable distance of this site from this community of Floyds Fork, the quality of surface water leaving

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this site and entering the Fork will remain acceptable. Sanitary Sewers will be provided; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, Binding Elements, and the Floyds Fork Overlay Review, **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. 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.
8. 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 Develop Louisville, Transportation Planning Review and the Metropolitan Sewer District.
 - 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 Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

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- 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.
9. 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.
10. 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.
11. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
12. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the August 20, 2015 Planning Commission meeting.
13. Construction activities on the site shall be limited to weekdays between the hours from 7 AM to 7 PM.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, White, Tomes, Peterson, and Lewis.

NO: No one.

NOT PRESENT: Commissioners Turner and Kirchdorfer.

ABSTAINING: No one.