

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

Case No: 16zone1008  
Request: R-4 and R-5B to R-6 with variances and waivers  
Project Name: Conti Apartments  
Location: 2019 R Frankfort Avenue, 133 R N. Bellaire Avenue,  
124/126 Vernon Avenue, TB 69E Lots 84, 85, & 15  
Owner: Brown Conti Co LLC  
Applicant: Brown Conti Co LLC  
Representative: Milestone Design Group; Dinsmore & Shohl  
LLP  
Jurisdiction: Louisville Metro  
Council District: 9-Bill Hollander  
**Case Manager: Julia Williams, RLA, AICP, Planning  
Supervisor**

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:**

01:00:30 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, 101 South Fifth Street, Suite 2500, Louisville, Ky. 40202  
Scott Kremer, 3258 Ruckriegel Parkway, Louisville, Ky. 40299

**Summary of testimony of those in favor:**

01:00:13 Mr. Ashburner gave a power point presentation. The site is a challenge. There is no alley access and drainage is also an issue.

01:22:30 Mr. Kremer continued the power point presentation. It's a fall away piece of property (to west) and is 2-stories at street level.

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

**The following spoke in opposition to this request:**

John Schardein, 209 Blankenbaker Lane, Louisville, Ky. 40202  
Phil Samuel, 3 Angora Court, Louisville, Ky. 40206  
Marybeth Orton, 135 North Bellare Avenue, Louisville, Ky. 40206

**Summary of testimony of those in opposition:**

01:33:39 Mr. Schardein is an attorney representing his daughter who lives in one of the buildings but was not notified.

Mr. Schardein objects to the 5 foot variance and is concerned about the drainage. The proposal will probably require a very large detention basin, but will depend on MSD to handle it.

01:35:48 Mr. Samuel stated drainage is a recurring problem. The national standard for considering drainage is out of date.

If approved, Mr. Samuel requests a binding element to clean the retention basin periodically (once a year).

01:41:53 Ms. Orton is concerned about the drainage, some elderly neighbors and the density of the proposal.

**Additional Agency Testimony:**

Tony Kelly, MSD, 700 West Liberty Street, Louisville, Ky. 40202

01:44:15 Mr. Kelly stated the maintenance of the underground basin is the responsibility of the owner of the property. "Since the rear yard is in a MSD easement, we have elected that they install a pipe underground that goes all the way back to a catch basin, so that it's a contained system. As it's shown, they've conceptually sized it for just the pre-developed flow rate, but they'll have to take a look at that system they're directly tying into and may have to provide additional volume in that basin. We won't know that until we get to construction."

**The following spoke neither for nor against the request:**

Mike O'Leary, 1963 Panyne Street, Louisville, Ky. 40206

**Summary of testimony of those neither for nor against:**

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

01:30:37 Mr. O'Leary stated that his main concern is drainage. A heavy rain event will cause a lot of damage because the property slopes downward. MSD is aware of the situation.

**Rebuttal:**

01:46:46 Mr. Ashburner stated he tried to rectify the notification with the Schardein's by providing notes of the neighborhood meetings and meeting them on site for discussion. The variance is not for the building to be 5 feet within the property line. The request is for a landscape buffer area. Also, conceptually the underground basin will work. It will be piped and probably be better than it is now.

**Deliberation**

01:53:53 Commissioner Howard stated the proposal has a unique design and the use is appropriate. Commissioner Carlson said there's no fire resistance in the walls now, but the new building will have. That's a nice improvement.

The commissioners agree the plan is in compliance and agree with the variance and waiver.

**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-4 and R-5B to R-6**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

**WHEREAS**, The site is located in the Traditional Neighborhood Form District. The Traditional Neighborhood Form District is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings; and

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

**WHEREAS**, Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are fifty to one hundred twenty years old, it is hoped that the Traditional Neighborhood Form will be revitalized under the new Comprehensive Plan. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) the preservation of the existing grid pattern of streets and alleys, (c) preservation of public open spaces; and

**WHEREAS**, The proposal is to consolidate the lots to form a large multi-family lot which is not consistent with the established pattern of lots along the block face; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the public realm of the site is maintained. The high density proposal is providing more open place than what is required per the LDC. The proposal is for residential infill. The Clifton Neighborhood plan called for the site to be downzoned to more accurately reflect the existing density at the time of rezoning. There are underutilized rear lots that were not associated with the main two family lots are being incorporated into the overall development. There is existing mixed density in the area. The site is located in the vicinity of a retail corridor (Frankfort Avenue) where existing sidewalks and transit is available. The area is mainly 1 to 2 story residential structures. The proposed structure is two stories at street level but 3 stories to the rear due to the topography of the site. The buildings fall within the setbacks of the two closest residential structures. Building materials will be similar to those found in the area. The Clifton ARC will determine if the proposal meeting their guidelines.

The proposal introduces a new density to Vernon Avenue. Setbacks adjacent to existing residential home lots are in compliance with the LDC. The screening within the buffers will be met; and

**WHEREAS**, the Louisville Metro Planning Commission further finds all other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 16ZONE1008, a change in zoning from R-4 and R-5B to R-6 based on the staff report and testimony heard today.

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Variance**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

**WHEREAS**, The requested variance will not adversely affect public health safety or welfare since more than the required open space is being provided on the site. Buffers will screen the site along the property lines; and

**WHEREAS**, The requested variance will not alter the essential character of the general vicinity since the site is still providing an open private yard space for the site; and

**WHEREAS**, The requested variance will not cause a hazard or nuisance to the public since the variance requested reduces a private yard the public will not be affected; and

**WHEREAS**, The requested variance will not allow an unreasonable circumvention of zoning regulations since the variance requested reduces a private yard where open space overall on the site is more than the minimum; and

**WHEREAS**, The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since most of the lots in the area are served by an alley where the accessory structure/parking area is located and accessed off that existing alley. This is not the case for the development site. An alley doesn't serve the rear of the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the overall open space required on the site is more than the minimum, there is no alley access to the parking which makes the driveway have to come from Vernon Ave. Using grass pavers for the driveway lessens the impact of having vehicles through the site; and

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

**WHEREAS**, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

**Waiver**

**WHEREAS**, The waiver will not adversely affect adjacent property owners since the screening requirements within the buffers will still be met; and

**WHEREAS**, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The screening requirements within the buffers will still be met on the site while the tree requirements will be placed elsewhere on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since one of the buildings is existing and the proposed structure is meeting the setback so that a grass paved drive lane to the rear parking can be made on the site

**WHEREAS**, the Louisville Metro Planning Commission further finds the 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 since the building meets the required setback and the screening requirements will still be met in the buffer.

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1008, the variance from chapter 5.4.1.D.2 and the waiver from chapter 10.2.4 for the subject site based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**District Development Plan and Binding Elements**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

**WHEREAS**, There do not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. The historic resource on the site is a contributing structure in the Clifton Preservation District, however that structure is proposed to be demolished due to the uninhabitable condition of the structure; and

**WHEREAS**, 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**, Open space requirements are being provided on the site in excess of the minimum; 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

**WHEREAS**, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Parking lots will meet all required setbacks; and

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1008, the District Development Plan and binding elements on page 16 of the staff report based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

**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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. 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.
  - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of



**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1008**

the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

- 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.
5. 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.
6. 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.
7. The materials and design of proposed structures shall be substantially the same as approved by the Clifton Architectural Review Committee.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**