

**PLANNING COMMISSION MINUTES**  
**November 16, 2017**

**PUBLIC HEARING**

**CASE NO. 17ZONE1032**

Case No: 17ZONE1032  
Request: R-4 to R-5  
Project Name: Bryant Farms Subdivision  
Location: 16401 Shelbyville Road

Owner: William R. Bryant Living Trust & Pinnacle Properties of  
Louisville  
William R. Bryant  
414 Flat Rock Road  
Louisville, Ky. 40245

Applicant: Ball Homes  
Brian Stephens  
3609 Walden Drive  
Lexington, Ky. 40517

Representative: Bardenwerper, Talbott, & Roberts, PLLC  
William B. Bardenwerper  
1000 North Hurstbourne Parkway  
Louisville, Ky. 40223

Jurisdiction: Louisville Metro  
Council District: 19 – Julie Denton  
**Case Manager: Laura Mattingly, AICP, Planner II**

**NOTE: Commissioner Lindsey left and did not vote on this case.**

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:**

04:40:48 Ms. Mattingly discussed the case summary, standard of review and staff analysis from the staff report.

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

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Bill Bardenwerper, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223  
Rocco A. Pignieri, Ball Homes, LLC, 13301 Magisterial Drive, Louisville, Ky. 40223  
Kyle N. Vaughn, 7600 West Highway 146, Suite 100, Pee wee Valley, Ky. 40056

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

04:47:30 Mr. Bardenwerper gave a power point presentation. Some lots will be lost but there is support from the neighborhood.

04:55:40 Mr. Pignieri continued the power point presentation. "These are plans that will fit on the lots quite readily and fit in well with the size of the existing homes".

04:57:35 Mr. Vaughn represents the Gardner Park Homeowners Association. The main concern was the buffering issue which has now been resolved. It has been a pleasure working with the applicant and applicant representatives and they have gone above and beyond listening to concerns and working them out. "An agreement was made between us and Ball Homes".

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

Casey Krill, Attorney at Law, 600 West Main Street, Suite 500, Louisville, Ky. 40202

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

05:06:10 Mr. Krill stated, "Provided Gardner Park is satisfied, the Village Council is ok with things as they stand."

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

Deb Delor, 16300 Eastwood Cutoff, Louisville, Ky. 40018

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

05:07:20 Ms. Delor stated, "We want to thank Ball Homes very much for responding to our interests and concerns. We are also pleased that the boundary at Gardner Park and the development have been improved. I would be remised if I did not say this is adding to traffic congestion and they will be utilizing Shelbyville Rd. There will be more developments introduced to you all and we still haven't answered the problem of how do

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we address safety and development in a coordinated fashion. That's a problem for us and will continue to be.”

**Deliberation**

05:08:48 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-4 to R-5**

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

**WHEREAS**, the proposal introduces a slightly higher density than the surrounding neighborhoods; and

**WHEREAS**, the proposal is not a high density development with a net density of 3.92 dwellings per acre; and

**WHEREAS**, the proposed housing is similar to those surrounding and is therefore compatible; and

**WHEREAS**, the proposed neighborhood streets include sidewalks and are adequately connected to adjoining streets; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the proposal is for a medium density single family subdivision; and

**WHEREAS**, the Louisville Metro Planning Commission further finds seventeen percent of the subdivision acreage is dedicated to open space.

**WHEREAS**, the subject property is located in the Village and Neighborhood Form Districts, which is characterized by predominately residential uses from low to medium/high density and that blend compatibility into the existing landscape and neighborhood areas with the provision for open space and greenways (in this case in the form of the Shelbyville Road “Parkway”) setback; this proposed R-5 subdivision is a low density one, although developed in accordance with a zoning district other than

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standard R-4, meaning an ever-so-slightly higher gross density (3.31 du/a) than perhaps otherwise achievable under the R-4 zoning district classification; the applicant could have chosen the "alternative development incentives (ADI) regulation" or "conservation subdivision regulation", or it could've applied for "PRD" rezoning; but R-5 is available, well-known, understood and easy to apply at this site, as there are other residential developments in the area that are zoned R-5 or comparable; and

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 21, 22, 23 and 25 of Guideline 3 because this low density residential subdivision adds to the desired mixture of housing types, sizes and styles while still being design-compatible in terms of scale and building materials; the proposed subdivision does not involve any known nuisances, such as odors, noises, lighting, aesthetics or traffic different than what already exist in the greater area; setbacks will include compatible side and rear yards, and the LDC tree canopy and landscape regulations will apply; houses face Shelbyville Road instead of back-up to it, and no waiver or variance, as originally proposed, are required here; and the detailed district development/preliminary subdivision plan (DDDP), neighborhood meeting PowerPoint and home design elevations filed with this application demonstrate all that; and

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-4 Single Family to R-5 Single Family be **APPROVED**.

**The vote was as follows:**

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

**NOT PRESENT AND NOT VOTING: Commissioners Lewis, Lindsey and Peterson**

**Development Plan/Preliminary Subdivision Plan with Binding Elements**

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

**WHEREAS**, there does not appear to be any steep slopes, water courses or hydric soils on site. The existing areas that are heavily wooded will be set aside as open space and preserved; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro

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Public Works has approved the preliminary development plan. The connections to existing roadways and the street stub to the property to the east are adequate for good connectivity; and

**WHEREAS**, the proposal exceeds the open space requirement; 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 allow transitions to the surrounding properties; and

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

**WHEREAS**, the proposed subdivision and its DDDP comply with all applicable Intents and Policies 1, 2, 5, 6, and 7 of Guideline 4 and Policies 1 and 2 of Guideline 5 because unlike most standard single-family subdivisions, this one includes protected interior and perimeter open space, protecting some natural resources and features, notably a stream, and assuring good transitions to neighboring properties; the homeowners association will maintain these open areas; and an older structure on the site will be examined and its historic resources inventoried for Metro Historic Preservation review and archiving; and

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 2, 5, and 11 of Guideline 6 because this land is surrounded by like-kind subdivisions; and that makes it an infill single-family residential site, appropriate for the area in the larger community, where new single-family housing is in greatest demand; and

**WHEREAS**, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 4, 6, 9, 11, 13, 14, 15, and 18 of Guideline 7; Policies 3, 5, 6, 7, 8, 9, 10 and 11 of Guideline 8; Policies 1, 3 and 4 of Guideline 9; and Policies 1, 2, 4, 6 and 8 of Guideline 12 because this subdivision is situated on a major collector street (Shelbyville Road) where sewer, water and other utilities already exist, and where road capacity exists; further, this DDDP has been reviewed by Metro Transportation Planning and Public Works personnel, who gave their stamp of approval prior to its docketing for

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Planning Commission review; and that assures that all of these applicable Public Works standards are complied with, including regulatory standards of the Land Development Code (LDC); and

**WHEREAS**, the proposed DDDP proposes connectivity to the Gardiner Park retail center in order to assure less traffic on Shelbyville Road as residents from this and the connecting subdivisions can access the retail center on internal streets; and

**WHEREAS**, the proposed DDDP assures that all points of access into the proposed subdivision are designed to operate safely and, because of the distribution between these two streets to function at relatively low volumes, as neighborhood serving streets are expected to function; thus, negative internal traffic impacts are avoided with this proposed subdivision; and, as noted, design of the site, as shown on the DDDP accompanying this application assures that corner clearances, driveway access, median openings, cross connections, etc. are provided as required; and

**WHEREAS**, the proposed DDDP complies with all applicable Intents and Policies 1, 3, 6, 7, 10 and 11 of Guideline 10 and Policies 3 and 5 of Guideline 11 because MSD requires that post-development peak rates of storm water runoff do not exceed pre-development peak flows, which is accomplished through on-site detention; new impervious areas will not have a negative impact on existing storm water systems; and MSD has given its stamp of preliminary approval the DDDP before it is set for Planning Commission review; and at time of construction, the proposed subdivision will need to include water quality measures to address the new MSD water quality standards; and any new construction will have to comply with MSD's soil erosion and sediment control standards; and

**WHEREAS**, the proposed subdivision complies with the Intent and applicable Policies 1, 2, 4, 5 and 6 of Guideline 13 because the local LDC requires tree canopies, certain kinds of interior and perimeter landscaping; and the LDC will be fully complied with; and

**WHEREAS**, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books and on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and Preliminary Subdivision Plan **SUBJECT** to the following Binding Elements with the revision to 9 - pluralize renderings:

**Binding Elements**

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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. 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.
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 is requested:
  - a. The development plan must receive full construction approval from Develop Louisville 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 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

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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. 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 and other issues required by these binding elements.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
8. 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.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 16, 2017 Planning Commission meeting.
10. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
11. 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.



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12. 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.
13. 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.
14. 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 larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
15. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.

**The vote was as follows:**

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

**NOT PRESENT AND NOT VOTING: Commissioners Lewis, Lindsey and Peterson**