

## PLANNING COMMISSION MINUTES

March 21, 2019

### PUBLIC HEARING

#### CASE NO. 18ZONE1064

Request: Change in zoning from M-2 to R-8A, change in form from TW to TN, detailed plan, landscape waiver, and height variance

Project Name: Shelby Parkway Apartments

Location: 917-927 Shelby Parkway

Owner: Tye J. Hardin and 927 Shelby, LLC

Applicant: 927 Shelby, LLC

Representative: Milestone Design Group

Jurisdiction: Louisville Metro

Council District: 4 – Barbara Sexton Smith

**Case Manager: Joel 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:

01:47:00 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

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

Mark Madison, Milestone Design Group, 108 Daventry Lane, Suite 300, Louisville, Ky. 40223

#### Summary of testimony of those in favor:

01:54:59 Mr. Madison gave a power point presentation. The garage will remain - to be cleaned up and updated. The proposed buildings are apartments and each building (4 units) will be on its own individual lot. One unit on each level will have front door access to keep the character of the neighborhood. The other 3 units will have access via the breezeway. A concern from the neighborhood meeting dealt with people running through the breezeways. Every breezeway that's not required for sidewalk access will have slatted wood connectivity about 6 feet in height to deter wandering from unit to unit. MSD and Public Works have given preliminary approval.

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02:01:06 Commissioner Daniels asked what the garage would be used for. Mr. Madison said it will be used to house maintenance and lawn and garden equipment.

02:01:55 Commissioner Brown asked if the bricks on the driveway being removed will be salvaged in accordance with the ordinance. Mr. Madison said there isn't a binding element but have no issue with removing the bricks and storing them until Public Works finds a place for them.

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

Ashley Memman, 922 Shelby Parkway, Louisville, Ky. 40204  
Noah Marples, 914 Shelby Parkway, Louisville, Ky. 40204

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

02:06:53 Ms. Memman stated there's a water garden and the roadway can handle only 1 car at a time. The additional 24 cars trying to get to their parking will only add to the congestion. They want to make it a one-way street and it won't work. The emergency vehicles have a tough time getting through as well. Also, they only want to build each unit one at a time, making it a very prolonged construction project.

Ms. Memman suggests proposing houses instead of apartments or building them all at once.

02:11:23 Mr. Marples said he lives in the 2<sup>nd</sup> house from the railroad tracks. The proposal is very high density for a dead end street and there's no good access for emergency vehicles. There are 2 houses vacant currently.

02:14:47 Chair Jarboe asked if Shelby Pkwy. will be made a one-way street and can the alley be accessed. Mr. Madison said people can use the alley. There are 25 proposed parking spaces and utilizing the available credits. There are spaces available for on-street parking, but it's not being utilized.

02:17:46 Mr. Dock asked Commissioner Brown if Public Works would consider restricting parking (2-way street) for a specific segment of road. Commissioner Brown said yes and it's typically a request made by the fire department. It can be requested on line through Metro Call 311 as a service request – just ask for that section to be evaluated. Commissioner Carlson added, the side that no parking would be allowed on for a fire lane will be the side that has fire hydrants.

**Rebuttal**

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02:19:54 Mr. Madison stated the buildings are not proposed to be built one unit at a time, but one building at a time. Also, we met with Steve Magre and Mike Morris representing the Germantown Paristown Association. The agreement is to work with them regarding the landscape plan. They were happy with the revised building layouts.

Commissioner Carlson asked why the applicant couldn't request R-8. Mr. Dock answered R-8A, on the totality of the site without separation by individual lots, is 44 units allowed; R-7 is 26 units if there is no separation by individual lots. Once there is separation by lots, it changes the overall density. Anything that differentiates from this plan whether it be density, style, design, yards, number of buildings or number of lots, will automatically have to be reviewed again by the Planning Commission.

02:27:50 Commissioner Daniels stated there's not adequate parking for the number of units. Mr. Dock said it's on a transit route and the applicant did not use on-street parking credit, which would be a total of 35 parking spaces. Commissioner Howard added, it's an urban area and the future tenants may not have cars.

#### Deliberation

02:32:51 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.**

#### **TW, Traditional Workplace to TN, Traditional Neighborhood**

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Cornerstone 2020 Staff Analysis for Change in Form and testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds the proposal complies with Cornerstone 2020 and Community Form guideline because the proposed residential uses on site are most appropriate if located in the abutting traditional neighborhood form district as the railway right-of-way forms the most definitive boundary between high intensity uses and the residential neighborhood which does contain corner commercial uses and an activity corridor. The removal of the industrial land use at this location makes the workplace form no longer necessary and removes the potential for potentially nuisance uses from the immediately abutting residential uses and the neighborhood.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in form district from TW, Traditional Workplace to TN, Traditional Neighborhood on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Peterson, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith and Lewis**

**Zoning Change from M-2 to R-8A, Multi-family Residential**

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Cornerstone 2020 Staff Analysis and the testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal preserves the existing grid pattern of streets, sidewalks and alleys as the exiting grid is being utilized to serve the development and public circulation is being made available. The lotting pattern reflects the existing lotting pattern of the area, with predominately long and narrow lots and appropriately-integrated higher density residential uses as the proposed lot width (32') is consistent with the lotting pattern within the same block and the immediately surrounding area. The proposal preserves is a higher density use and is located in close proximity to Shelby Park. The site does not contain existing structures to be renovated or preserved; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the lotting pattern is consistent with the area, height is consistent with the area and provides a transition to a nonresidential area, and the four area of Traditional Neighborhood are being met. The proposed building materials increase the new development's compatibility as the proposal complies with LDC 5.6.3 by providing a variation of material, façade change, and roof variation. The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities as connectivity to the rear alley is provided through the site to prevent congestion at the end of the dead-end street. The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky as it will be compliant with LDC 4.1.3. The proposal expands the variety of housing types available to the neighborhood. The proposal is

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located within close proximity to transit routes serving employment and activity centers. The proposed district allows for the project to provide housing for the elderly or persons with disabilities. The proposed district allows for the project to provide appropriate/inclusive housing. The proposal provides appropriate transitions as the proposed district is being made compatible with adjacent areas through the use of buffers and landscaping as required by Ch. 10 of the LDC. The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another as no residential units are being provided immediately adjacent to the railway. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards as the site design standards of LDC 5.4.1 are being met; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because the proposal provides open space that helps meet the needs of the community standards as the site design standards of LDC 5.4.1 are being met. Open space design is consistent with the pattern of development in the Traditional Neighborhood Form District as the site design standards of LDC 5.4.1 are being met. The subject property does not appear to contain any significant natural features; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because the subject property does not appear to contain any significant natural features. The subject site does not contain any historic resources. The proposal respects the historic nature of the surrounding area by providing compatible building materials and design. The site does not appear to contain wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means. Sidewalk repair is being provided by the developer. The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands as sidewalk repair will be provided and connectivity to the rear alley is being made to connect the existing grid pattern of streets. No additional right-of-way was required of the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because access to the site is through areas of mixed density. The development provides for an appropriate functional hierarchy of

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streets and appropriate linkages between activity areas in and adjacent to the development site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development as bike parking facilities, sidewalk repair, shade trees, and pedestrian connectivity to the public ways is being provided; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because the proposal's drainage plans have been approved by MSD; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because no natural corridors are present on site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the proposal is located in an area served by existing utilities or planned for utilities. The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from M-2, Industrial to R-8A, Multi-family Residential on property described in the legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Howard, Peterson, Tomes and Jarboe**  
**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith and Lewis**  
**ABSTAINING: Commissioner Daniels**

#### **Waiver of Land Development Code (LDC), section 10.2.4 to reduce the required 15' LBA adjacent to the railroad right-of-way**

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

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**WHEREAS**, the waiver will not adversely affect adjacent property owners as the buffer reduction is adjacent to a railway right-of-way and sufficient space is provided to remove the first residential units from directly abutting the railway; 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. A proposed 6' solid screen is provided as required in conjunction with ILA trees. All plantings will provided as required in the reduced area. Sufficient space is provided to remove the first residential unit from directly abutting the railway; 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 as the remainder of the proposal is consistent with and compatible with the surrounding area and the proposed LBA reduction allows for parking encroachment and drive lanes which allow for better circulation; and

**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 as the remainder of the proposal is consistent with and compatible with the surrounding area and the proposed LBA reduction allows for parking encroachment and drive lanes which allow for better circulation.

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**Variance from LDC, section 5.1.12 to allow height in excess of the infill established range**

**WHEREAS**, the requested variance will not adversely affect public health safety or welfare as the project is located at the edge of the residential neighborhood and does not impeded the safe movement of vehicles or pedestrians; and

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity as the proposed height is consistent with the wide range of heights present in the neighborhood; and

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public as the height provides transition from shorter homes to the railway and nonresidential areas and is located at the edge of the neighborhood; and

**WHEREAS**, the requested variance will not allow an unreasonable circumvention of zoning regulations as the proposed height is consistent with the wide range of heights present in the neighborhood; and

**WHEREAS**, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as infill standards apply and the block face contains shorter homes; 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 as height is consistent with the area and provides a transition to a nonresidential area; and

**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 as no development has occurred.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** a waiver of the Land Development Code (LDC), section 10.2.4 to reduce the required 15 foot landscape buffer area adjacent to the railroad right-of-way and a variance from the Land Development Code (LDC), section 5.1.12 to allow height in excess of the infill established range.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Peterson, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith and Lewis**



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**Detailed District Development Plan and Binding Elements**

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

**WHEREAS**, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan. The proposal is located within close proximity to transit routes serving employment and activity centers. The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities as connectivity to the rear alley is provided through the site to prevent congestion at the end of the dead-end street. The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands as sidewalk repair will be provided and connectivity to the rear alley is being made to connect the existing grid pattern of streets; and

**WHEREAS**, the proposal complies with the four areas of traditional neighborhood as set forth in LDC 5.4.1 which include private yard area; 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. The proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the lotting pattern is consistent with the area, height is consistent with the area and provides a transition to a nonresidential area, and the four area of Traditional Neighborhood are being met. Building materials increase the new development's compatibility as the proposal complies with LDC 5.6.3 by providing a variation of material, façade change, and roof variation. Appropriate transitions are provided as the proposed district is being made

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compatible with adjacent areas through the use of buffers and landscaping as required by Ch. 10 of the LDC; and

**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 as outlined in the Staff Analysis for the change in zoning.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan with alternative site design (5.4.1.H) **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. 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) 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 creating the lots as shown on the approved development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.

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- d. A reciprocal/shared parking agreement in a form acceptable to the Planning Commission legal counsel shall be created between the all lots and parking areas shown on the approved plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services
- e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 21, 2019 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
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. Bricks within the driveway approach to be removed shall be salvaged and delivered to Public Works prior to bond release.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Peterson, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith and Lewis**