

PLANNING COMMISSION MINUTES
July 5, 2018

PUBLIC HEARING
CASE NO. 18ZONE1012

Request: Change in zoning from R-4 to R-5 and a District Development Plan/Preliminary Subdivision Plan with binding elements

Project Name: Smyrna Parkway Subdivision
Location: 7905 Smyrna Parkway

Owner: The Believers Church Incorporated
7905 Smyrna Parkway
Louisville, Ky. 40228

Applicant: Welch Developers, LLC
301 Middletown Park Place, Suite A
Louisville, Ky. 40243

Representative: Mindel, Scott Association Inc.
Curtis Mucci
5151 Jefferson Boulevard
Louisville, Ky. 40219

Bardenwerper, Talbot & Roberts, PLLC
Nick Pregliasco
1000 North Hurstbourne Parkway, 2nd floor
Louisville, Ky. 40223

Jurisdiction: Louisville Metro
Council District: 23 – James Peden
Case Manager: **Julia Williams, RLA, AICP, Planning Supervisor**
Presented By: **Brian Davis, Planning and Design Manager**

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:

01:20:10 Mr. Davis discussed the case summary, standard of review and staff analysis from the staff report.

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The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2nd floor, Louisville, Ky. 40223

Summary of testimony of those in favor:

01:24:24 Mr. Pregliasco gave a power point presentation. The church, previous owners, had certain features placed in the contract so the request would be compatible with the church and neighbors. The home will be removed and will serve as an entrance.

Deliberation

01:35:49 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

01:37:36 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted based on Cornerstone 2020 staff analysis, testimony heard today and the applicant's findings.

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 1, Community Form because the proposal is located in an area dominated by single family residences and will be adding density to the area; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 1, Community Form because the proposal is not considered high density and the development is accessed from a collector level road, which is appropriate; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 1, Community Form because this proposal is for a similar density residential development as what currently existing in this neighborhood; and

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WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 1, Community Form because sidewalks are being provided along the Smyrna Parkway frontage as well as throughout the site; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because this development is residential only but is increasing residential density near an activity center; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because the proposal is subdividing a large underutilized tract in order to create more housing near an activity center; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because this proposal is located .25 south of Outer Loop where a mix of commercial and neighborhood serving uses currently exist; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because this development is near a concentration of non-residential and specifically commercial properties; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because this proposal is within the Neighborhood form and near a cluster of uses that serve the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because this proposal has one access point for this development only, but a shared access in this location is not appropriate, due to the property being bounded by other residential with a private drive; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because utilities are provided to serve the development; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because parking will be provided on each individual site; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 2 Centers because the nearby center is within walking distance. Pedestrian connectivity is being provided; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because the site layout is similar to other single family subdivisions in the area; and

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WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because the building materials will be residential in character and similar to other adjacent residential and other residential in the area; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because single family residential is compatible with single family residential because it is the same low density use; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because Transportation Planning has determined no adverse impacts on traffic; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because lighting will meet LDC requirements; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because the proposal is for a consistent single family design and appears to meet the requirements for the Neighborhood form; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because the proposal in increasing the density in an area that is accessible by transit, with a transit line along Outer Loop; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because the proposal possibly offers a housing option for the elderly, as there is a TARC route and services nearby; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because the proposal is appropriate in that it offers more housing in an area where it is likely needed; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because buffers and setbacks appear to be in compliance with LDC standards; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 3, Compatibility because all setbacks and building heights appear to be within LDC standards and are compatible with surrounding development; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 4, Open Space because open space is not required for this development; and

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WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 4, Open Space because the site is meeting the tree canopy requirements. No karst features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 5, Natural Areas and Scenic and Historic Resources because the site is meeting the tree canopy requirements. No karst features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 5, Natural Areas and Scenic and Historic Resources because the site has no historical or architectural value; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 5, Natural Areas and Scenic and Historic Resources because LOJIC identified hydric soils on site but there is no evidence of a wetland; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 7, Circulation because Transportation Planning is not requiring road improvements with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 7, Circulation because the proposal has adequate access and is not required to connect to any other abutting use due to the intensity of uses surrounding the development and private drives; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 7, Circulation because the applicant is proposing right of way dedication; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 8, Transportation Facility Design because there are developments to the north and south that contain drives but both developments are multi-family. The property to the south has a private drive; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 8, Transportation Facility Design because this site is accessed directly from a collector level road and does not appear to impact surrounding single family uses; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 8, Transportation Facility Design because by connecting to the existing street network, the appropriate linkages are made; and

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WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 9, Bicycle, Pedestrian and Transit because a sidewalk is being provided along the frontage of Smyrna Parkway as well as within the development site; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 10, Flooding and Stormwater because MSD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 14, Infrastructure because there are existing utility connections on site; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 14, Infrastructure because there are existing public water connections; and

WHEREAS, the Louisville Metro Planning Commission finds the proposal meets Guideline 14, Infrastructure because the Health Department has no issues with the proposal; and

WHEREAS, the subject property is located in the Neighborhood Form District, which is characterized by predominately residential uses from low to high density; this proposed R-5 subdivision is a low density one, although developed in accordance with a zoning district other than standard R-4, meaning an ever-so-slightly higher gross density (4.4 du/a) than perhaps otherwise achievable under the existing 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 those regulations require affordable components not appropriate for this location; and furthermore, R-5 is available, well-known, understood and easy to apply at this site, and there are other residential developments in the area that are zoned R-5A; and

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 21, 22 and 23 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 exists in the greater area; setbacks will include compatible side and rear yards, and the LDC tree canopy and landscape regulations will apply; the detailed district development/preliminary subdivision plan (DDDP), neighborhood meeting PowerPoint and home design elevations filed with and to be later reviewed with this application demonstrate all that; and

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WHEREAS, the proposed subdivision and its DDDP comply with all applicable Intents and Policies 1, 2 3, 4, 5, 6, and 7 of Guideline 4 and Policies 1 and of Guideline 5 because unlike most standard single-family subdivisions, this one includes some meaningful interior and perimeter open space, conserving some natural resources and features, assuring good transitions to neighboring properties including the recently approved Crossroads IGA neighborhood grocery to the south, and providing for passive outdoor activities off residents' individual home lots; a that assures for better buffers and a far superior neighborhood look and feel; and the homeowners association will maintain these open areas; and

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 2, 5, and 11 of Guideline 6 because this proposed subdivision helps to ensure the availability of residential building lots where lots are in high demand, meaning near the many businesses along Outer Loop and Preston Highway; including the recently approved Crossroads IGA neighborhood grocery to the south, 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 4, 5, 7, 8, 9, 10 and 11 of Guideline 8; Policies 1, 2, 3 and 4 of Guideline 9; and Policies 1, 2, 3, 4, 6, and 8 of Guideline 12 because this subdivision is situated on a primary collector street (Smyrna Parkway) where sidewalks will be constructed, near public transit at Outer Loop, where sewer, water and other utilities already exist, where road capacity exists, and in close proximity to jobs and shopping in all directions, especially as noted hereinabove; further, this DDDP has been reviewed by Metro Transportation Planning personnel, who gave the DDDP the preliminary stamp of approval prior to docketing for Planning Commission review; that assures that all of these applicable Public Works standards are complied with, including regulatory standards of the Land Development Code (LDC); and

WHEREAS, in that regard, the proposed subdivision will assure that both existing Smyrna Parkway access and new subdivision streets and stub connections are constructed to operate safely and to function at relatively low volumes, as neighborhood serving streets are expected to function; thus, all negative traffic impacts are avoided with this development; 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 will require that post-development peak rates of stormwater runoff do not exceed pre-

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development peak flows; that is accomplished through on-site detention; thus, new impervious areas will not have a negative impact on existing stormwater systems; also, the DDDP has received MSD's preliminary stamp of approval 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 accordingly, 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 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 **RECOMMEND** to the Louisville Metro Council that the change of zoning from R-4 Single Family Residential to R-5 Single Family Residential on 10.91 acres on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Howard, Lewis, Peterson, Robinson, Smith and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Tomes

Major Preliminary Subdivision Plan/ District Development Plan and Binding Elements

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

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

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WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public has approved the preliminary development plan; and

WHEREAS, there are no open space requirements pertinent to the current proposal. However, there are 2 open space lots proposed for the site; 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 roadways. Buildings will meet all required setbacks; 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.

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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. 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.

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4. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
5. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 5, 2018 Planning Commission meeting.
6. The applicant shall submit a Tree Preservation Plan for approval by Planning and Design staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
7. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
8. 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."
9. 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.
10. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs

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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.

11. 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.
12. 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.
13. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
14. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.

The vote was as follows:

YES: Commissioners Brown, Carlson, Howard, Lewis, Peterson, Robinson, Smith and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Tomes