

Development Review Committee

Staff Report

August 18, 2021



Case No:	21-DDP-0065/21-MSUB-0005/21-WAIVER-0097
Project Name:	Casualwood Subdivision
Location:	8314 Casualwood Way
Owner(s):	Martin and Grace Weber
Applicant:	Matthew Toole
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Jay Lockett, AICP, Planner I

REQUEST(S)

- **Waiver** of Land Development Code section 7.3.30.E to allow greater than 15% overlap of required rear yards with drainage easements as shown on the development plan.
- **Revised Detailed District Development** plan with replacement of existing binding elements.
- **Major Preliminary Subdivision Plan** to create 33 buildable lots.

CASE SUMMARY/BACKGROUND

The applicant is proposing a major preliminary subdivision to create 33 buildable lots and 1 open space lot on approximately 11.98 acres. The site is zoned R-5A in the Neighborhood form district and is located near the Highview area of southeast Louisville Metro. The site was previously rezoned under docket 9-21-06 with an approved plan for 64 multifamily dwelling units. That plan has expired and not developed, and the site is currently vacant. The site has 3 stub streets from adjacent properties that provide access to the site. The site has some areas of steep slopes as well as a protected stream and the development avoids disturbing these sensitive features.

STAFF FINDING

The Revised Detailed District Development Plan request is adequately justified and meets the standards of review, although staff feels a better road layout would make the development in greater conformance with the Comprehensive Plan. While the plan is generally in conformance with the Land Development Code, staff would prefer better connectivity through the site by connecting Zelma Fields Ave to the other proposed roadway through the site. The previously approved plan showed this connectivity and there are no environmental constraints that would prevent the connection. The Waiver request is adequately justified and meets the standard of review. The subdivision plan is compliant with the Land Development Code except where the waiver is requested.

TECHNICAL REVIEW

The proposed Street A on the development plan would change names from Casualwood Way to Branchtree PI at a proposed “eyebrow” within the development. The Highview Fire dept and Metrosafe have indicated that this layout is acceptable for the purposes of coordinating emergency response.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as all affected lots are internal to the development. Location of utility easements on this site is largely dictated by topography.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will not violate the Comprehensive Plan. The location of utilities is largely dictated by existing utility locations, topography and other features. Lots may still have adequate yard areas with such overlaps and will not adversely affect adjacent properties.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as all required yards will still be provided for all lots. A majority of the proposed lots will not have overlap of easements.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) 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.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land, as it would likely require easements to be located off lots or beside structures, potentially disturbing environmentally sensitive areas or further reducing useable yard areas for individual home sites.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The site contains steep slopes as well as a protected stream. The development allows for the protection of environmentally sensitive areas.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe vehicular and pedestrian transportation within and around the development and the community has been provided. Planning and Design Services staff would prefer a roadway network with better connectivity, with all stub streets joined in an intersection within the site. Transportation Planning Staff has approved the preliminary development plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There are no open space requirements pertinent to the current proposal.

- d. 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;

STAFF: 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.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: While the development plan generally complies with the Land Development Code and the Comprehensive Plan, staff feels that greater internal road connectivity would increase conformance. Mobility Goal 3, Policy 13 states that Cul-de-sacs should be allowed as small side streets or where natural features limit development of through roads. There are no natural features preventing the connection of Zelma Fields Ave to the rest of the road network within the site. Zelma Fields connects out to Beulah Church Rd and would be preferred as a through street to create better connectivity to the larger road network around the site.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan with replacement of existing Binding Elements**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan**

NOTIFICATION

Date	Purpose of Notice	Recipients
8-2-21	Hearing before DRC	1 st tier adjoining property owners and residents Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 22

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements with proposed changes
4. Proposed Binding Elements

1. Zoning Map



21-DDP-0065

Tuesday, August 10, 2021 | 12:51:07 PM



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This map is not a legal document and should only be used for general reference and identification.

2. Aerial Photograph



21-DDP-0065

Tuesday, August 10, 2021 | 12:48:22 PM



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3. **Existing Binding Elements with proposed revisions**

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 elements 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. Lot 2 – The net density of the development shall not exceed 11.47 dwelling units per acre (32 units on 2.79 acres).~~

~~Lot 3 – The net density of the development shall not exceed 4.66 dwelling units per acre (32 units on 6.87 acres).~~

43. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

54. **A note shall be placed on the preliminary plan, construction plan and the record plat that states.** “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.”

65. 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 ~~Louisville Metro Department of Inspections, Permits and Licenses~~ **Construction Review**, 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.~~ **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.**

c. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.

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.~~ **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.

- 6. 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.**
- 7. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."**
- ~~78.~~ 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.
- ~~89.~~ The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors other parties engaged in development of this site and shall advise 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.
- ~~910.~~ 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, open spaces, TPAs, and other issues required by these binding elements I conditions of approval.
 - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
- ~~4011.~~ 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.

- ~~11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 6, 2006 Planning Commission meeting.~~
- ~~12. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.~~
- ~~13~~**12. All street names be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure. 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.**
- 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.**
- ~~14. Multi-family development of the property shall be limited to development under a horizontal property regime.~~
- ~~15. Front entrance doors of all buildings shall have architectural detailing so that the back of the buildings facing Zelma Fields appear similar to the front facades. Varied colors and textures for the exterior materials and roofs shall be used. Specifically, brick and wood shall be used, with varied colors for the painted wood.~~

4. Proposed 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 elements 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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "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."
5. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - c. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - d. 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.
6. 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.
7. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing

shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

8. 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.
9. 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 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.
10. 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, open spaces, TPAs, and other issues required by these binding elements/conditions of approval.
 - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
11. 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.
12. 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.
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 larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.