

Planning Commission

Staff Report

October 19, 2023



Case No:	22-MSUB-0004
Project Name:	1614 Johnson Road MRDI Subdivision
Location:	1614 Johnson Road
Owner(s):	Jean Rueff
Applicant:	Highgates Management
Jurisdiction:	Louisville Metro
Council District:	19 – Anthony Piagentini
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Waiver** from 7.3.30.E to allow a drainage easement to overlap rear yards by more than 15% (22-WAIVER-0224)
- **Floyds Fork Development Review Overlay** (22-FFO-0003)
- **Major Preliminary Subdivision** utilizing the **Mixed Residential Development Incentive (MRDI)** provisions of the Land Development Code

CASE SUMMARY/BACKGROUND

The applicant proposes a new 98-lot subdivision utilizing the Mixed Residential Development Incentive (MRDI) provision of the Land Development Code. One lot would contain 96 multi-family units, while the remaining 97 lots would be developed with single-family residences. The site is approximately 72.55 acres in gross area. One tract, Tract 2, would be reserved undeveloped at this time. The other tract, Tract 1, would be developed with the subdivision. Tract 1 is approximately 61.1 acres in gross area, and would be 64.73 acres in net area once right-of-way dedication has been made.

The net density would be 2.98 dwelling units/acre. The maximum density allowed in R-4 is 4.84 du/acre. Utilization of the MRDI provisions would allow a density bonus up to 5.08 du/acre. The net density as proposed would remain below the normal R-4 permitted maximum density. The MRDI provisions are also being followed with respect to average lot area, and distribution of affordable units throughout the site.

The most recent iteration of the site plan has removed left turn lanes on Johnson Road which were present on earlier versions. The most recent Traffic Impact Study does not find that they are required.

The site is located within the Floyds Fork Development Review Overlay district. Several aspects of the FFDRD recommendations should be discussed by the Planning Commission. Please refer to the Technical Review.

STAFF FINDING

Staff finds that the proposed subdivision meets the requirements of the Land Development Code, with the exception of the requested waiver, and is in compliance with the MRDI requirements with respect to average lot size, density, and distribution of affordable units. Staff finds that the requested waiver is adequately justified and meets the standard of review. The Commission must make a finding regarding development within the Floyds Fork Development Review Overlay district.

TECHNICAL REVIEW

Land Development Code (2023) Louisville Metro.

Plan 2040

The plan has received preliminary approval from all applicable agencies.

Land Development Code Chapter 3 Part 1 addresses the Floyds Fork Development Review Overlay district. The Commission should make findings regarding the following recommendations of the FFDRD guidelines:

Floyds Fork DRO Guidelines section 1.a recommends the following:

- a 100 foot buffer strip should be maintained on each side of Floyds Fork
- a 50-foot wide strip should be maintained on each side along tributaries
- riparian vegetation

Floodplain compensation basins will be located within this buffer. While the existing buffer strip is sufficiently narrow that existing trees are unlikely to be removed, additional plantings cannot be provided, and the grading for the basins may negatively impact the root systems of trees on the edge of the existing buffer. The applicant has provided an explanation to the effect that forested areas will not be significantly disturbed. Staff would recommend that preservation of the buffer strips be prioritized, and that compensation basins not be located within the buffer areas so that additional riparian vegetation can be provided in the buffer zones where it is currently lacking.

Section 1.e recommends that structures, impervious surfaces, etc. should not be located within the floodplain. Structures are proposed within the existing floodplain, and the existing floodplain will be altered by the proposed development. The applicant provided an exhibit at staff's request showing how the floodplain will be altered. Please refer to the Floodplain Exhibit to reference the proposed changes to the floodplain. The applicant provided the explanation that the floodplain will be in a similar or improved condition following the development, as the increase in floodplain compensation will mitigate negative environmental impacts. The applicant has also explained that MSD floodplain ordinance enforcement will be provided. Staff would recommend that the existing floodplain not be graded and developed with impervious surfaces, but preserved to mitigate impacts of run-off to Floyds Fork and tributaries.

Section 1.f recommends that filling and excavation not be permitted in the floodplain. The site plan shows that the floodplain is proposed to be significantly altered, and floodplain compensation basins will be graded into the modified floodplain area. The applicant has provided an explanation to the effect that discretion should be exercised in favor of this development, as the development will fulfill other goals. Staff would recommend that filling and excavation within the floodplain not be undertaken in order to increase the developable land at the expense of sensitive natural areas.

Section 2.f recommends that proposed major subdivisions indicate existing wooded areas to be retained and to be removed, and that the location of existing trees exceeding 18" in diameter that would be removed should be shown on the plan. The applicant has indicated that it would be infeasible to ground check the entire property and show the existing trees meeting this description on the plan, and has therefore not done so. Staff would recommend that this provision be followed in order for the Planning Commission to make an informed decision regarding the site plan and proposed tree clearance. Staff has visited the site twice, once in March 2022 and once in August 2023. In March 2022, the site was largely mowed and this task would have been possible. In August 2023, the site was largely overgrown and this task would have been challenging.

Floyds Fork DRO Guidelines section 4 (Hillsides) recommends that:

- sites be designed to preserve the natural character of the land to the greatest extent possible
- areas with slopes of 20% or greater generally not be disturbed
- major subdivisions with developable lots or roadways situated on slopes of 33% or greater prepare a geotechnical report
- site design minimize cuts and fills
- cuts, fills and other earth modifications be replanted with appropriate vegetation
- site design minimize terracing hillsides in order to provide additional building sites

Extensive development is proposed on the hillside sloping down to Floyds Fork. Significant impact to the integrity of the hillside can be anticipated, requiring engineering solutions to stabilize the development. The applicant has provided an explanation of the engineering that will be performed on the hillside in order to provide safety and stability for development. Additionally, the applicant has stated that a majority of the slopes on the site will not be impacted. Staff would recommend that the hillside not be intensively developed, and that development be restricted to flatter areas of the site at the top of the hill in order to reduce the impact to the hillside.

Floyds Fork DRO Guidelines section 5.a recommends cluster patterns of new development whenever possible, and that building sites and land disturbance activity be concentrated in portions of the site better suited for development, to minimize disruption of environmentally-sensitive areas and to retain the corridor's rural character. The site plan shows a subdivision layout with relatively large lots lining all the streets rather than small lots clustered in the more easily-developed areas. The applicant has provided an explanation of compliance with this guideline, stating that the layout preserves existing tree canopy and slopes through the middle of the site going north-south, and across the north-eastern area of the site. Staff would recommend clustering lots on the portions of the site that could be developed without significant impact to environmentally-sensitive areas.

Section 7.n recommends that:

- the visual impact of new structures proposed for prominent hillsides visible from public facilities, scenic corridors and the stream itself be minimized
- trees be retained or planted to screen them or to create a filtered view of these structures (one tree per 25 feet of building facade length).

Extensive development is proposed on the hillside sloping down toward Floyds Fork, and the compensation basins within the buffer will prevent planting of additional screening trees to mitigate the visual impact on persons utilizing the stream. While tall trees currently exist in a narrow buffer between Floyds Fork and the fields where the basins are proposed, these trees are almost entirely deciduous in character and will provide little screening during the winter months. The applicant has provided an explanation of how the development complies with this guideline, stating that tree canopy preservation will adequately screen the development, and that the compensation basins will not significantly disrupt existing canopy. The applicant states that the scenic corridor viewshed will be maintained by the layout of the development which places most structures behind existing canopy. Staff would recommend that development on the hillsides be minimized and that additional trees be planted within the riparian corridor to screen the new homes, particularly native evergreens.

Chapter 3, under the Development Review Overlay District description, states in section A.1.b, in part, that the purpose of the district is to protect the quality of the natural environment. Staff requested an explanation as to how the plan will meet this purpose, as the plan does not appear to comply with many key guidelines of the DRO. The applicant has provided an explanation as to how the plan does meet this purpose, summarizing the points made above. Staff would recommend greater compliance with the guidelines of the DRO.

INTERESTED PARTY COMMENTS

Numerous interested party comments have been received in opposition to the request. Concerns include increased traffic, both along Johnson Road and at the affected intersections with Aiken Road and Shelbyville Road, increased flooding downstream along Floyds Fork, and the general future health of Floyds Fork and the surrounding sensitive environmental areas. Many comments have questioned the compliance of the plan with the Floyds Fork Development Review Overlay guidelines.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.E

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

STAFF: The waiver will not adversely affect adjacent property owners as the overlap between the rear yard and the drainage easement is not likely to be visible outside the property or increase drainage off the property.

(b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address overlap between required yards and drainage easements.

(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 the overlap is made necessary by MSD generally requiring drainage easements to be in rear yards.

(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: 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 by requiring excess rear yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Floyds Fork Development Review Overlay**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision**

NOTIFICATION

Date	Purpose of Notice	Recipients
07/31/2023 09/18/2023	PC Public Hearing	1 st tier adjoining property owners & current residents Registered Neighborhood Groups in Council District 19 Persons who signed in at the neighborhood meeting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map



1614 Johnson Road
feet

550

Map Created: 3/8/2023



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2. Aerial Photograph



1614 Johnson Road
feet

550

Map Created: 3/8/2023



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3. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. 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.
4. 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."
5. All street signs shall be installed by the Developer, and shall conform to 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.
6. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights-of-way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
7. Open space/conservation 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.
8. 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.
9. 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.

10. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
11. 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.
12. 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, maintenance of noise barriers, maintenance of WPAs, 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.
13. 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.
14. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. 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."
16. All buildings constructed shall be of an architectural style which will harmonize with other buildings in the same neighborhood. Diversity Housing units shall be constructed with exterior materials and architectural designs that are consistent with the materials and designs of the market rate units in the project.
17. No more than 50% of one type of housing (single family/multi-family) may be developed until at least 50% of the other type of housing has been developed. Also, 50% of the designated affordable units must be constructed by the time 50% of the total units in the development have been constructed. These calculations shall be based on the number of building permits issued.

18. The developer/owner shall be responsible for submitting an annual report to Planning & Design Services staff at 12-month intervals from the date of the recording of the record plat, until all affordable owner-occupied units have been issued building permits. The annual report shall identify the name of the subdivision/development, the plat book and page number of the record plat if applicable, the lot/unit numbers, the lot/unit addresses, and the sale price and/or rental rates of the designated affordable units. The annual report shall indicate separately the number of building permits issued for single-family and multi-family dwellings. New lots may not be recorded and building permits shall not be issued for any unit on the subject site if the required annual reporting is not up-to-date.
19. For a period of 15 years after the last affordable rental unit building permit has been issued, the developer/owner or assigns shall submit annual reporting as described in Condition of Approval 18 and Land Development Code section 4.3.20.E.7. Failure to update the annual report shall be subject to enforcement per Land Development Code section 11.10.
20. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.
21. The Applicant will conduct field work on the property, including a boundary survey and a topographical survey, to determine the exact location of the wetlands so that they are preserved and required buffering is provided, during construction review. No construction, clearing or grading of any kind shall take place within the required buffer, unless a variance is requested and obtained from the Board of Zoning Adjustment. This includes construction, clearing or grading for residential structures, accessory structures, pools, patios, decks, fences or any other appurtenance.