

Planning Commission Staff Report

June 4, 2020



Case No:	20-DDP-0020
Project Name:	Mary Street Townhomes
Location:	1073 Mary Street
Owner(s):	SIMIC
Applicant:	Alma Simic
Representative(s):	Alma Simic
Jurisdiction:	Louisville Metro
Council District:	4 – Barbara Sexton Smith
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- **Waiver** of Land Development Code (LDC), section 7.8.60.B.4 to allow lots to front on an alley instead of a public or private street
- **Revised Detailed District Development Plan** with review of substandard lot creation and alternative site design

CASE SUMMARY

The subject property was rezoned from R-6 to R-7, multi-family in 2017 to allow for the construction of a 2-story, 5-unit complex with individual garages oriented toward the side alley. Construction of the proposed development is nearly complete. The applicant now proposes to subdivide the land to allow for the sale of the individual units. The construction review division has confirmed that construction is acceptable for attached dwelling units, including fire resistance. The existing conditions and proposed lot lines result in the need to request relief from the ordinary standards subjected upon single-family development in the Traditional Neighborhood Form District.

The Board of Zoning Adjustment reviewed a proposal for side and rear setback variances on June 1, 2020.

STAFF FINDING

The revised detailed district development plan and waiver appear to be adequately justified based on staff's analysis contained in the standard of review. The requests for substandard lot creation and alternative site design also appear to be appropriate for the development site.

TECHNICAL REVIEW

- Land Development Code, section 5.4.1.H allows for the Planning Commission to approve alternative site design for developments creating three or more contiguous residential structures. Approval under this provision removes the requirement for each lot to be subjected to the four areas of residential site design in the traditional form district. In approving the change-in-zoning with detailed plan and private yard variance in 2017, the Planning Commission determined that the development was in keeping with the character of the area and the Comprehensive Plan. No structural changes are proposed which alter the development in a manner inconsistent with the previously approved development plan. The site will maintain orientation to Mary Street and allow for cross connectivity in the rear yard for pedestrians. The

side yard (now rear yard for lots 2-5) will be also be maintained. Each unit's function will be relatively unchanged, but the developer will have the option to sell each lot/unit. This does not preclude the units from being rented.

- If the subdivision will not conflict with the established pattern in the neighborhood and will promote the public health, safety, or welfare by facilitating development or rehabilitation of such property compatible with the surrounding neighborhood, Land Development Code, section 7.1.85 allows for subdivisions in traditional form districts to reduce their lot sizes with approval of the Planning Commission. No structural changes will occur which alter the character of the neighborhood. Additional flexibility in the occupant of each lot promotes the public welfare by adding more housing choice consistent with the area. Each lot complies with maximum density and FAR, which cannot be varied though this provision.
- Preliminary approval has been received from MSD, DPW, E-911 and Louisville Fire.
- A minor subdivision plat will be recorded to create the lot lines as proposed on the development plan. All declarations and easement agreement will be recorded simultaneously.

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 the orientation of the structure is existing and access does not interfere with use of adjacent property.

- (b) The waiver will not violate specific guidelines of Plan 2040.

STAFF: The waiver will not violate specific guidelines of Plan 2040 as access is not obtained through areas of lower intensity, no individual access to collector level roadways or higher is provided, and the site will maintain pedestrian access and orientation towards the primary street (Mary Street).

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as access to each unit was constructed with the development.

- (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 regulation would deprive the applicant of the reasonable use of the land as the development is in a well-connected, urban neighborhood with transit service and a variety of housing types and choices, including lots that may not be oriented toward "traditional" streets are present.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DETAILED DISTRICT DEVELOPMENT PLAN

- 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 proposed revision does not alter natural or landscape features on the site as private rear yards (formerly side yard) will be maintained.

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community has been provided as the subject site is in a well-connected urban neighborhood with transit service and pedestrian orientation and connection for the site will be provided.

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

STAFF: Provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development has been provided.

- 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.

- 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 site design is relatively unchanged from the approved development plan in case 16ZONE1084. The proposed revision to create individual lots will not alter the compatibility of the site to the area and is consistent with future development providing for housing choices.

- 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: The development plan conforms to the Comprehensive Plan and Land Development Code and there are no outstanding issues. The proposed revisions to subdivide the property do not alter the character of the area or adversely impact the safe movement of vehicle or pedestrians. Additional house choice is made available with the proposal.

REQUIRED ACTIONS

- **APPROVE or DENY** the **Waiver** of Land Development Code (LDC), section 7.8.60.B.4 to allow lots to front on an alley instead of a public or private street

- **APPROVE or DENY the Revised Detailed District Development Plan** with review of substandard lot creation and alternative site design subject to proposed binding elements

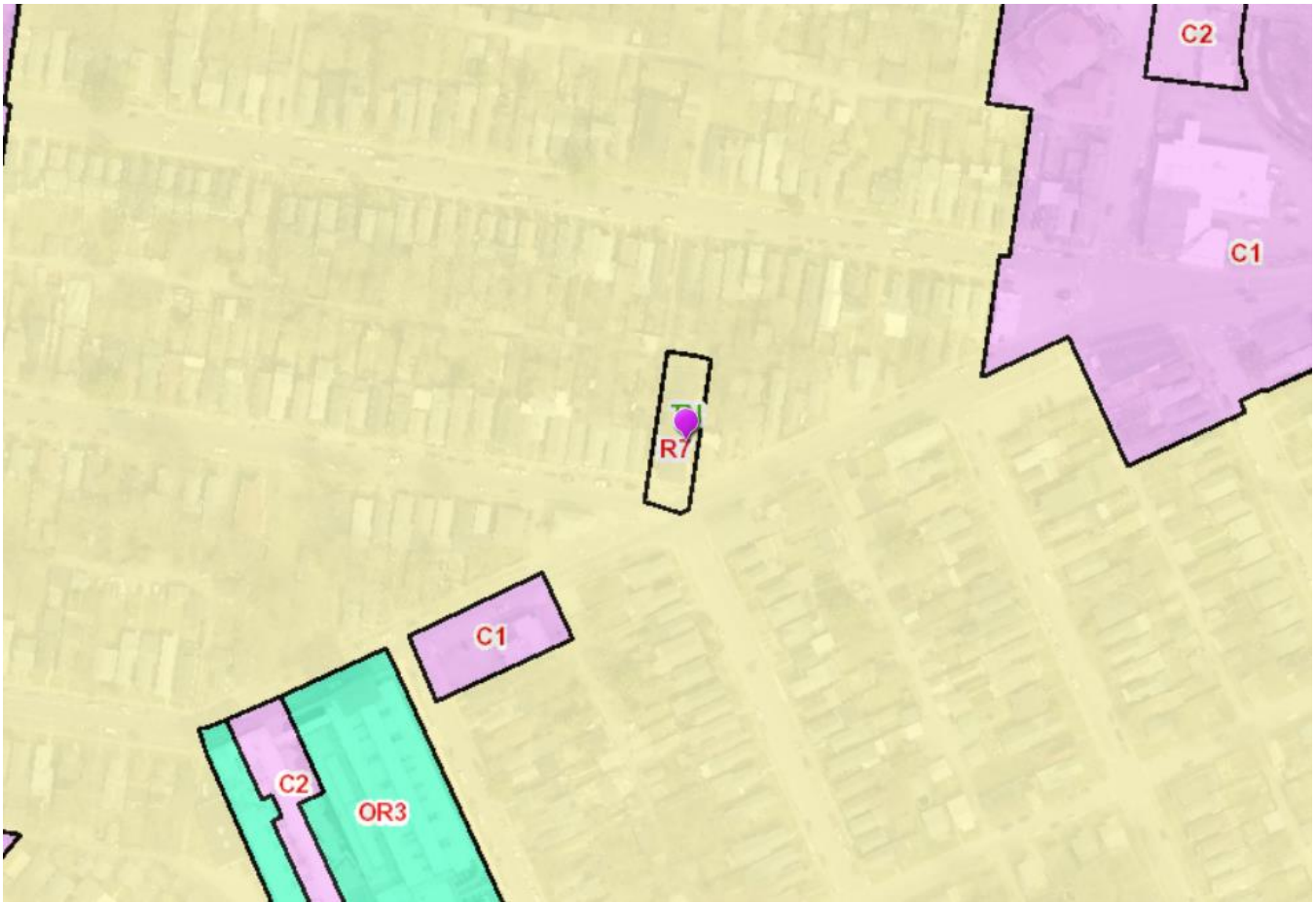
NOTIFICATION

Date	Purpose of Notice	Recipients
05/03/20	Hearing before DRC	1 st tier adjoining property owners. Registered Neighborhood Groups in Council District 4

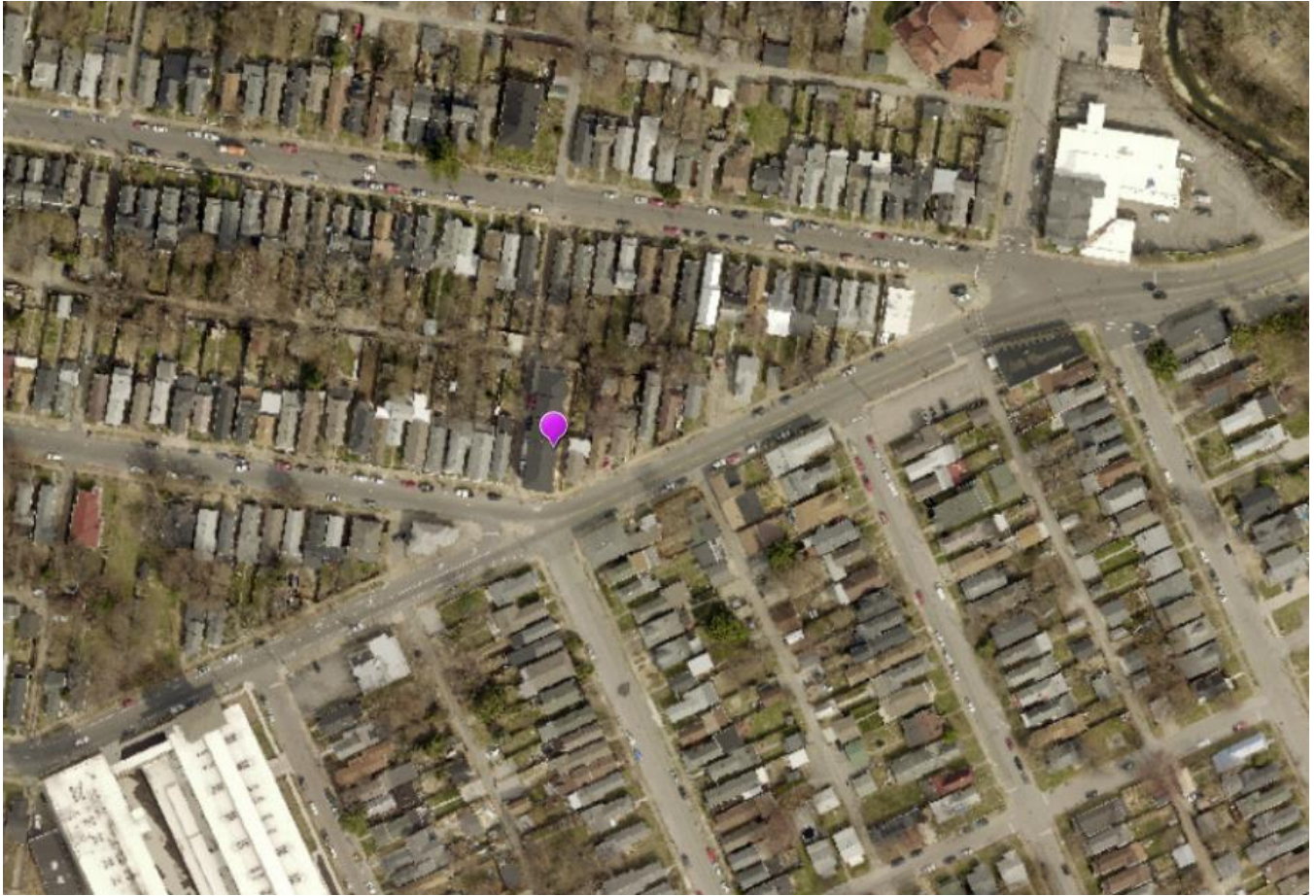
ATTACHMENTS

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

1. Zoning Map



2. Aerial Photograph



4. **Existing 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.
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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 20, 2017 Planning Commission meeting.
8. The Owner / Developer will maintain the transit stop on an as needed basis.

5. 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 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 subdivision plat to create the lots lines as shown on the development plan must be reviewed, approved, and recorded. All declarations and easement agreements required of the plat must be recorded simultaneously.
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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 20, 2017 Planning Commission meeting.
8. The Owner / Developer will maintain the transit stop on an as needed basis.

9. A minor subdivision plat, including "Declaration of Cross-Easements" as approved by MSD on May 5, 2020 and contained in the case file of record (both minor plat and revised development plan) in the Planning Commission offices shall be recorded within 30-days of final action of the revised detailed district development plan. No changes shall be made to the declaration as approved by Planning Commission legal counsel on May 12, 2020, unless approved in writing by MSD and the Planning Commission or designee.
10. In accordance with the "Declaration of Cross-Easements" as identified in binding element #9, lot owners, not MSD, are responsible for all maintenance, service, repairs, and replacement of sanitary sewer lines located on the five lots and are responsible for all stormwater/drainage facilities, features, and conditions on any or all five lots. Lot owners individually and collectively, shall indemnify, defend, and hold harmless MSD with respect to the foregoing responsibilities and are jointly and severally liable to MSD with respect to such obligations. These obligations may be further detailed, but not reduced, by a separate written agreement in the land records.
11. Pedestrian access and orientation directly to Mary Street as required by Land Development Code, section 5.4.1.B.2 and as shown and approved on the renderings and detailed district development plans in case 16ZONE1084, and as provided for on the revised detailed district development plan approved by the Planning Commission on June 4, 2020 shall be restored prior to the issuance of Certificate of Occupancy.
12. The proposed 5' utility and access/egress easement as shown along the east property line shall be free from obstruction, except fences having gates which shall not be locked. An improved means of access from this easement to Mary Street shall be provided prior to the issuance of Certificate of Occupancy. An improved means of access may include either a direct individual connection from this easement to Mary Street or connection to the pedestrian access as noted in Binding element #11.