

**PLANNING COMMISSION MINUTES**  
**February 2, 2017**

**PUBLIC HEARING**

**CASE NO. 16ZONE1048**

Case No: 16ZONE1048  
Request: R-4 to R-5A with waiver  
Project Name: Avalon Springs, Phase II  
Location: 7506 Beulah Church Road  
Owner: St. James Crossing, LLC  
Applicant: St. James Crossing, LLC  
Representative: Land Design and Development; Bardenwerper Talbott & Roberts, PLLC  
Jurisdiction: Louisville Metro  
Council District: 23-Peden  
**Case Manager: Brian Mabry, AICP, Planning Supervisor**

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:**

02:03:04 Mr. Mabry discussed the case summary, standard of review and staff analysis from the staff report.

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

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, 2<sup>nd</sup> floor, Louisville, Ky. 40223  
Kevin Young, Land Design and Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222  
David Steff, 7812 Applevue Lane, Louisville, Ky. 40228

**Summary of testimony of those in favor:**

02:16:00 Mr. Bardenwerper gave a power point presentation. Appletree Way and Applevue Ln. will be connected. Notification extended beyond 2 tiers.

02:24:39 Mr. Young stated this proposal is phase 2 on 8 acres, in which 5.9 will remain open space. A significant amount is wetlands and requires permitting from the

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Corps of Engineers. The storm water goes to an existing basin down to the stream. "We will continue with open discussion and maybe come up with a better solution."

02:32:56 Mr. Steff, President of Apple Valley Homeowners' Association, and they are in favor of the proposal. The connection of the dead-end streets will help tremendously with garbage trucks, snow plow trucks and emergency vehicles. The proposed buildings will be high quality.

**The following spoke neither for nor against the request:**

Michael Boyer, 7621 East Manslick Road, Louisville, Ky. 40228

**Summary of testimony of those neither for nor against:**

02:35:08 Mr. Boyer stated he's concerned about drainage running off the proposed site and into the back of his property. "Since they have started their construction on phase 1, I have noticed a marked increase."

Mr. Boyer gave power point presentation, mainly of pictures after heavy rainfall. The dialogue with the applicant and MSD will be kept open. "I do not want to lose the back 200+ feet of my property into swamp or marsh land."

**Rebuttal:**

02:38:43 Mr. Young stated the blue line stream has 100-year flood plain associated with it. The detention basin will be enlarged. If a better solution comes along, it will be considered.

02:41:40 Mr. Kelly, MSD, stated it's a blue line intermittent stream, a natural well-defined channel. "They'll have to analyze the pre-development flow rate so once they actually get into construction, they may have to have some additional volume beyond a typical detention basin."

Mr. Bardenwerper said the finding of facts are in the booklets.

**Deliberation:**

02:46:00 The commissioners are in agreement that the zoning change is appropriate, water management will continue to be looked at and the connectivity for accessibility will be a nice enhancement.

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**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-5A**

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted.

**INTRODUCTORY STATEMENT**

**WHEREAS**, this is an application for a 44-unit, 6-building addition to the existing/under construction apartment community by the same developer that built the apartments in Phase I of Avalon Springs; it is located south of The Fountains condominiums and Ashton Park apartments; the already existing/under construction Avalon Springs townhome buildings and those proposed in this case will be nearly identical; the PowerPoint presentation shown at the Planning Commission Public Hearing, along with the site plan, accompanying this application evidences and explains all that; the R-5A zoning and development plan accompanying same are compatible with the referenced form of development that has occurred already in the immediate vicinity; as said, there already exist The Fountains and Ashton Park multi-family communities immediately to the north; Beulah Church Road leads to and from the Snyder Freeway, thus this area is a good location, fronting as this site does on a minor arterial or major collector level roadway, which takes traffic to and from places of employment and places of retail shopping along the Outer Loop and such places of worship as the large Highview Baptist Church not far north of this site; and

**GUIDELINE 1: COMMUNITY FORM**

**WHEREAS**, the Community Form that this property is located in is the Suburban Neighborhood Form District, which is characterized by predominantly residential uses that vary from low to high density and that blend compatibility into the existing landscape and neighborhood areas; these proposed apartment buildings, as noted above, adjoin multi-family zoning and uses to the north and also single-family uses to the west where significant open space setbacks are provided; the proposed apartment building addition is compatible in terms of layout, design and density/intensity to adjoining and nearby uses; because the Suburban Neighborhood Form recommends diverse housing types, this application accomplishes that, as an addition to an attractively designed, high-end apartment community that this same developer recently built; and this is proposed as a medium density use, not a high density one, which would in and of itself probably be appropriate, given its location on an arterial or major collector roadway such as Beulah Church Road which is in close proximity to areas of shopping, worship, schools, etc.; and

**WHEREAS**, in conformance with this Guideline of the Comprehensive Plan, the private,

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disconnected access road throughout this apartment community as shown on the development plan is appropriate to this form and location; and

**GUIDELINE 2: CENTERS**

**WHEREAS**, the Intents and applicable Policies 1, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 of this Guideline all pertain to the notion of “centers”, which is a Comprehensive Plan concept which encourages mixed land uses organized around compact activity centers that are existing, proposed or planned in order to promote efficient uses of land, lower utility costs, reduce commuting time and transportation related air pollution, provide an opportunity for a mixture of residential development and housing types, and add to and encourage vitality and a sense of place in neighborhoods; within Suburban Neighborhood Form Districts, activity centers should be located at street intersections with at least one of the intersecting streets classified as collector or above; Beulah Church Road is a minor arterial/major collector; the entrance to this proposed apartment community will not lead to the Apple Valley subdivision, given that this is a private development adjoining other multifamily communities; the location of this medium density/intensity multi-family residential use, moving from this site on the south through The Fountains condominium community and Ashton Park to the apartment community on the north, means that overall these multi-family communities take on the character of a small Neighborhood Center at this location; and

**WHEREAS**, Policies 4 and 5 encourage compact and mixed uses, which this proposal ensures, by virtue of location and site design; Guidelines 6 and 7 encourage a mixture of residential and commercial uses, proximate one as to the other, and that is what is shown on the aerial photographs shown at the Planning Commission Public Hearing of Beulah Church Road from this site north to the commercial uses at the Outer Loop; and

**WHEREAS**, Policies 11, 13, 14 and 15 recommend that centers be designed taking into account the development patterns and designs of nearby development projects and also assure well screened and shared parking, well identified safe access, as well as use of existing utilities when possible; and all of that occurs in this particular case, again as evident on the development plan accompanying this application and on the aerial photographs on which this development plan is superimposed; and

**GUIDELINE 3: COMPATIBILITY**

**WHEREAS**, the Intents and applicable Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 28 and 29 of this Guideline all pertain to the issues of how to ensure that land uses and transportation facilities are located, designed and constructed so as to be compatible with nearby land uses and to minimize impacts to residential areas, schools and other sensitive features; and

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**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because, as said above, the design of this proposed apartment community takes into account what adjoins it (i.e., apartments to the north and single family homes across a significant open space to the west); in this case, brick building materials similar to those used in the existing multi-family communities and nearby homes will be utilized on all structures, which is already evident in immediate adjoining multi-family and single family neighborhoods; buildings will be two-story, townhome style and design; odors, traffic, noise and commercial type lighting will not be involved in these developments, such that those kinds of impacts will not exist; lighting will be residential in style and design; visually speaking, the proposed apartment addition will be compatible with those adjoining it and typical of the area; again, this is not high density zoning, but it is a type not at all that different than standard R-4 single-family housing, given the townhome style and design of these apartment buildings; and as evident on the development plan accompanying this application, good transitions, appropriate setbacks, landscape buffers, building heights that do not require variances, suitable LDC compliant signage are all involved in this application and again, evident on the development plan; and

**GUIDELINES 4 AND 13: OPEN SPACE AND LANDSCAPE CHARACTER**

**WHEREAS**, the Intents and applicable Policies 1, 3, 6 and 7 of this Guideline 4 and Policies 1, 2 and 5 of Guideline 13 all pertain to the idea of ensuring well designed, permanently protected open spaces within communities, as well as landscape throughout these communities that protect and enhance the natural environment; and

**WHEREAS**, this application complies with these Intents and applicable Policies of this Guideline because green space and open areas are included within the additional section of the existing Avalon Park apartment community; and there will be abundant trees appropriately located to provide for internal aesthetics, screening and buffering, as well as landscaping to satisfy all of the requirements pertaining the LDC; and

**GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY**

**WHEREAS**, the Intents and applicable Policies 1, 3, 5 and 6 of this Guideline all pertain to the provision of a positive culture for attracting and sustaining a variety of land uses, in this case residential; and

**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because this is an infill development, meaning that it adjoins to the north other existing like-kind development for which there is a significant market demand; and

**GUIDELINES 7, 8 AND 9: CIRCULATION, TRANSPORTATION FACILITIES, AND BICYCLE, PEDESTRIAN AND TRANSIT ACCESS**

**WHEREAS**, the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 13, 14, 15 and 16 of

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Guideline 7, plus Policies 7, 8, 9, 10 and 11 of Guideline 8, plus Policies 1, 2, 3, 4 and 5 of Guideline 9 all pertain to the issues of traffic impacts, access to and circulation through proposed developments and the provision of access by other means of transportation than simply the automobile; as this is a medium density multi-family development along a road that has adequate traffic-carrying capacity, development of this site as an addition to an existing multi-family community of this type is appropriate; Metro Transportation Planning reviewed the development plan filed with this application prior to docketing for the LD&T Committee meeting and before Planning Commission public hearing, and Metro Public Works and Transportation Planning agencies have determined that the existing external road system has adequate traffic-carrying capacity and that access to and, as shown on the development plan, through the site is appropriate; and sidewalks will be provided along Beulah Church Road and internally and bicycle accommodations will be made within the multi-family development; and

**GUIDELINES 10 AND 11: FLOODING AND STORMWATER PLUS WATER QUALITY**

**WHEREAS**, the Intents and applicable Policies 1, 3, 6, 7, 10 and 11 of Guideline 10 and Policies 3, 5 and 8 of Guideline 11 pertain to the issues of effectively managing stormwater and preventing the degradation of water quality due to water pollution and soil erosion and sedimentation; and

**WHEREAS**, this application complies with the Intents and applicable Policies of these Guidelines because MSD has provided regulations that pertain to soil erosion and sedimentation control, which is a construction detail that will be required of this applicant in connection with its developments of these multi-family and single-family communities; among other things, postdevelopment rates of runoff may not exceed pre-development conditions, and they will not do so in this case; ordinarily that is accomplished through on-site detention as here; and MSD's new water quality guidelines will also be accommodated through the design of one or several of multiple measures that are now available to assure best management practices in this regard; and

**GUIDELINE 12: AIR QUALITY**

**WHEREAS**, the Intents and applicable Policies 1, 2, 4, 6, 8 and 9 this Guideline all pertain to the issues of assuring no adverse consequences on air quality and, when possible, even taking measures to improve same; and

**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because, generally speaking, filling in the infill, so to speak (which means building next to development that already exists, whenever possible, as opposed to in outlying areas), is important as a means to assure reduced vehicle miles traveled; and this tends to help with air quality because people driving from their homes to places of work, to shopping, to places of

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worship, to school and so forth will be more proximately located relative to same and that is the case here; and

**GUIDELINE 14: INFRASTRUCTURE**

**WHEREAS**, the Intents and applicable Policies 2, 3, 4, 6 and 7 of this Guideline all pertain to assuring adequate infrastructure to support a new development project; and

**WHEREAS**, this application complies with the Intents and applicable Policies of this Guideline because this site was chosen because it has sanitary sewer service available; also, water and electric service are available at the site without the need for lengthy extensions; it is always more cost-effective for the developer and better for public utilities when existing utility infrastructure can be utilized; and, as said, Beulah Church Road has adequate traffic-carrying capacity for limited amounts of added, especially residential, development where infill sites like this exist; and

**WHEREAS**, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books and 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 Metro Council, **APPROVAL** of Case No. 16ZONE1048, a change in zoning from R-4 to R-5A and the Alternative Connection Plan as shown on the Revised Detailed District Development Plan presented today based on the staff report, testimony heard today and the applicant's finding of facts.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Waiver**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

Waiver of Section 10.2.4 to waive a portion the 25 ft LBA along the property lines adjoining The Fountains community.

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**WHEREAS**, the waiver will not adversely affect adjacent property owners because a 25 ft LBA shared between the adjoining Fountains residential condominium community and this proposed residential community will exist, just not the larger LBA required as if the adjoining Fountains residential condominium community were a use consistent with its commercial zoning; it is that commercial zoning that results in the need for a greater LBA on this property; and the commercial zoning dates way back in time and was never needed or utilized considering the ultimate development of that property as a multi-family use; and

**WHEREAS**, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with this application and considering the findings of fact adopted in this case and previous phases of this development and in the original Fountains rezoning; and

**WHEREAS**, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it accommodates a decent shared LBA between this and the adjoining property, keeping the proposed new development as far away as possible from single family properties to the north and west and out of areas protected as open space; and

**WHEREAS**, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would be forced to provide an LBA wider than necessary given the two adjoining compatible uses and given the need to protect the open space to the south and west and provide significant separation between this proposed development and the single family properties to the north and west.

**Development Plan and Binding Elements**

**WHEREAS**, The proposal generally avoids the delineated wetlands on-site. The proposal will not preserve tree canopy by proposing to remove the existing four percent tree canopy, but it will add a substantial amount of new tree canopy by replacing it with the required 20 percent canopy; and

**WHEREAS**, Provisions for safe vehicular and pedestrian transportation within and around the development and the community has been provided. Efficiency of the overall street network is compromised by not completely connecting to adjacent stub streets; and

**WHEREAS**, The open space requirements are being exceeded on-site. In addition, required recreational space is provided; and



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**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 properties; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to the Comprehensive Plan to the extent described in the Staff Analysis for Rezoning above and to applicable requirements of the Land Development Code

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1048, a waiver of the Land Development Code section 10.2.4 to reduce to 10 feet the 25 foot landscape buffer area required along the north property line and the Revised Detailed District Development Plan and revised binding elements shown on page 19 of the staff report, with the exception of binding element 3d to remain as written based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

**Binding Elements**

1. The development shall be in accordance with the approved revised 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. 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.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The revised development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. 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.
  - d. 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.
4. 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.
5. 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.
6. 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

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- 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.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 2, 2017 Planning Commission meeting.
  8. A 6 ft. high solid wood shadow box fence shall be provided along the north property line between the multi-family portion of the Ashton Park 2 project adjoining the Fountains Condominiums. This new fence shall tie into the existing Fountains Condominiums fence and shall be stained the same color as the existing fence.
  9. The applicant shall install landscaping as shown on the proposed landscape plan presented at the February 2, 2017 public hearing.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**