

**Planning Commission
Staff Report**
August 19, 2021



Case No:	21-DDP-0014
Project Name:	Netherwood Patio Homes
Location:	11001 Jordain Drive
Owner(s):	ST Ventures LLC
Applicant:	ST Ventures LLC
Representative(s):	Bardenwerper, Talbott, & Roberts, PLLC
Jurisdiction:	Louisville Metro
Council District:	17- Markus Winkler
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Variance** from Land Development Code, section 5.3.1.C to reduce the required 20' front/street side yard setback as described on the development plan
- **Revised Detailed District Development/Major Preliminary Subdivision Plan**

CASE SUMMARY

The development site was rezoned in 2006 from R-4 to R-5A to allow for the development of 83 attached dwellings served by private roads. Several revisions have been proposed across the development site. Each calling for attached units. Forty-four attached units have been built on the northwest/west side of Netherwood Ridge Place. The current proposal calls for 35 detached dwellings on the southeast/east side. The detachment of the units has required that the roads serving each unit proposed be public roads with stub connections to adjacent property and public sidewalks. Public roads and sidewalks have been provided as required. To achieve the desired density and layout, variances are requested to allow the buildings to remain in their proposed locations with all required rights-of-way being provisions (50' width).

STAFF FINDING

The proposal is adequately justified for approval based on staff's analysis contained in the standard of review.

TECHNICAL REVIEW

- Preliminary approval has been received from Louisville MSD and Transportation Planning
- Variances:

VARIANCES REQUESTED:

1. Variances are requested for Tr 2 from Section 5.3.1.C of the Louisville Land Development Code to vary the 20 ft front/streetside setbacks as follows:
Units 1, 2, 16, 17, 18 thru 29 = 18 ft setback provided. 2 ft encroachment
Units 3, 4, 5, 9 thru 11 = 13 ft setback provided. 7 ft encroachment.
Unit 12 = 12 ft setback provided. 8 ft encroachment.
Units 13, 14 & 15 = 17 ft setback provided. 3 ft encroachment.
Unit 34 hammerhead 20 ft setback = 13 ft setback prvd. 7 ft encroachment
Unit 35 hammerhead 20 ft setback = 10 ft. setback provided. 10 ft encroachment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare as the setback does not impede the safe movement of pedestrians or vehicles and garages will be setback from sidewalks and roadways where sidewalks aren't present to provide for pedestrian and vehicular movement.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the setback from pavement or sidewalks appears consistent adjacent development.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of pedestrians or vehicles and the setback from pavement or sidewalks appears consistent adjacent development..

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance does not create a hazard or nuisance, or adversely impact public health, safety, or welfare.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or the same zone as public roads were required for this detached unit development even in the absence of lot boundaries.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or 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 relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred.

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 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 will be conserved while also allowing for the site to be developed in compliance with the Land Development.

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

STAFF: Safe pedestrian and vehicular connectivity is being provided as required by the Land Development Code.

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

STAFF: The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed has been provided in accordance with the Land Development Code

- 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 is compatible with nearby development as the proposal provides for detached units and public roadways with sidewalks. This is compatible with the existing condominium development, as well as nearby standard subdivisions.

- 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 proposed development plan conforms to Plan 2040 and generally conforms with the Land Development Code as public roads and sidewalk are provided to increase mobility and connectivity and a different, but compatible, residential option is being provided.

REQUIRED ACTIONS

- **APPROVE or DENY** the **Variance** from Land Development Code, section 5.3.1.C to reduce the required 20' front/street side yard setback as described on the development plan
- **APPROVE or DENY** the **Revised Detailed District Development/Revised Major Preliminary Subdivision Plan**

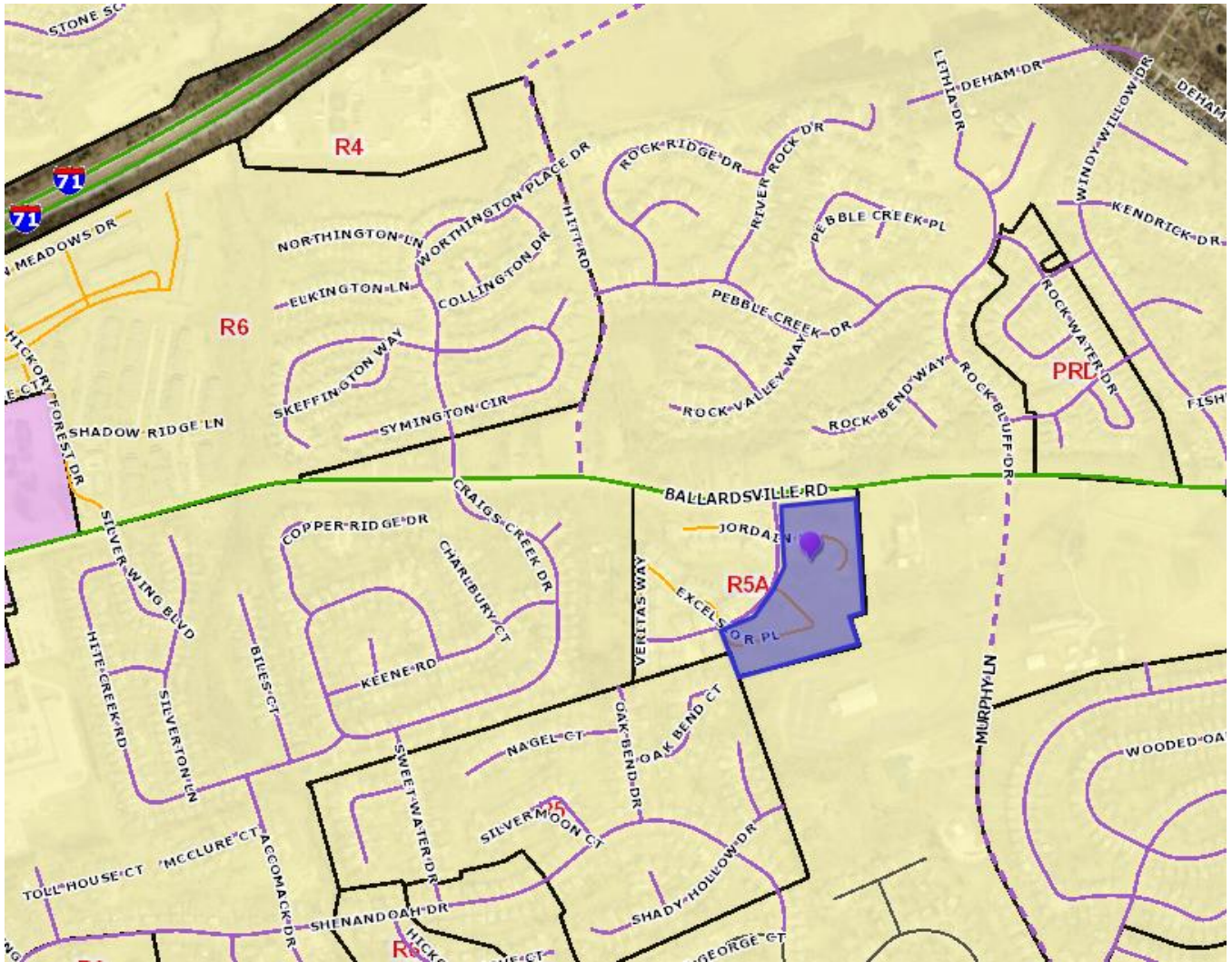
NOTIFICATION

Date	Purpose of Notice	Recipients
8/4/21	Hearing before LD&T	1 st and 2 nd tier adjoining property owners and residents Registered Neighborhood Groups in Council District 17

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements – 17DEVPLAN1074
4. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



3. Existing Binding Elements – 17DEVPLAN1074

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 not exceed 83 units on 26.2 acres (3.6 DU per acre)~~
3. ~~Signs shall be in accordance with Chapter 8.~~
4. ~~No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~
5. ~~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.~~
6. ~~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, 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 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.~~~~
7. ~~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.~~
8. ~~There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system audible beyond the property line.~~
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 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.~~

10. ~~The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 20, 2006 Planning Commission meeting.~~
11. ~~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 there after. 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.~~
12. ~~The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.~~

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. 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. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance
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. 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."

8. 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."
9. 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.
10. 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.