

PLANNING COMMISSION MINUTES
August 29, 2019

PUBLIC HEARING

CASE NO. 19ZONE1013

Request: Change in zoning from R-4 to R-5 with major preliminary subdivision plan
Project Name: Cedar Brook Subdivision, Section 5
Location: 8101 Cooper Chapel Road
Owner: Select Homes, LLC & Action Real Estate, LLC
Applicant: David Greenberg
Representative: Dinsmore & Shohl, LLP
Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel
23 – James Peden

Case Manager: Joel P. Dock, AICP, Planner II

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:

01:48:56 Joel Dock discussed the case summary, standard of review and staff analysis from the staff report (see staff report and recording for detailed presentation). Mr. Dock noted the technical review items that have been added since the Land Development Transportation meeting.

The following spoke in favor of this request:

Cliff Ashburner, 101 South 5th Street, Suite 2500, Louisville, Kentucky, 40202

Summary of testimony of those in favor:

01:51:32 Cliff Ashburner, applicant presented Power Point slide show (see recording for detailed presentation). Mr. Ashburner detailed the area of the proposed subdivision, connections to this development from adjacent properties, and the updated development plan with landscape buffers. He stated Mike Hill is present for questions.

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The following spoke in opposition of this request:

David M. Durbin, 9414 Cedar Creek Road, Louisville, Kentucky, 40228

Keith Recktenwald, 8204 Adams Run Road, Louisville, Kentucky, 40228

Kristie Graf, 12415 Old Henry Road, Louisville, Kentucky, 40223

Summary of testimony of those in opposition

01:48:47 David Durbin, adjacent property owner, asked why the codes and regulations weren't followed with at the beginning of this process. Mr. Dubin stated he is against the code change, unsure of entrances and exits of the subdivision, the decrease of his property value, and the possibility of trespassers on his property.

02:01:20 Keith Rechtenwald stated the smaller lot sizes allowed by the rezoning will decrease property values in the area and increase traffic. Mr. Rechtenwald presented signatures from neighbors who are opposed to this development (see recording for detailed presentation).

02:03:45 Kristie Graf, representing mother who is an adjacent property owner, stated she in opposition and voiced her concerns with the increase homes in the area will increase crime, traffic, and accidents.

Rebuttal:

02:05:56 Cliff Ashburner responded the plan presented today shows the appropriate 15 foot landscape buffering and is in compliance with land development code. Mr. Ashburner noted there have been neighborhood meetings to discuss community involvement of this subdivision development. (see recording for detailed presentation).

02:09:26 Travis Fiechter asked Mr. Ashburner discussed the 15 foot landscape buffer along the Kusch property line. They concluded the line in question on the development plan is the easement (see recording for detailed presentation).

Deliberation

02:10:56 Planning Commission deliberation (see recording for detailed presentation).

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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.

02:15:02 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Plan 2040 Staff Findings and the evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the **Land Use & Development Goal 1: Community Form** because the proposed district is for lowdensity residential. It is not a high density use necessitating location near major transportation facilities, the proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development as landscape buffers and tree canopy will be provided as no transitions are required and adjacent uses are for single-family use; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Community Form** because an existing residential lot is being developed for residential purposes; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 3: Community Form** because the site does not appear to possess any significant concerns related to wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion. An intermittent stream is present and incorporated into the site design with detention and buffering; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 4: Community Form** because Preservation of distinctive cultural features including landscapes, natural elements and built features will be provided. An intermittent stream is present and incorporated into the site design with detention and buffering, the site does not appear to contain distinctive historic resources; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 1: Mobility** because the proposed district is for lowdensity residential. It is not a high density use necessitating location near major transportation or commercial facilities; and

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WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Mobility** because Access to the site is obtained through areas of similar density; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 3: Mobility** because the proposed district is for lowdensity residential between exiting residential developments. It is not a high density use necessitating location near major transportation or commercial facilities, Existing roadway infrastructure is adequate to support the proposed density, the development will bear or share in rough proportionality the costs of transportation facilities and ser-vices made necessary by development, Improvements to the public transportation system will be made by the developer or in the future by KYTC. The proposal will entail rightof-way dedication and a fee-in-lieu for sidewalk constriction. KYTC has plans for modification and additional connectivity abutting the subject property, Necessary improvements will occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel. The proposal will entail rightof-way dedication and a fee-in-lieu for sidewalk constriction. KYTC has plans for modification and additional connectivity abutting the subject property, Necessary improvements will occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel. The proposal will entail rightof-way dedication and a fee-in-lieu for sidewalk constriction. KYTC has plans for modification and additional connectivity abutting the subject property, no direct access to high speed roadways is provided. Cooper Chapel is a collector level roadway and provides access to the subdivision; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Community Facilities** because The proposal is located in an area served by existing utilities or planned for utilities as evidenced by adjacent development, The proposal would appear to have access to an adequate supply of potable water and water for firefighting purposes as evidenced by adjacent development, The development will have adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 1: Livability** because the development recognizes and incorporates the unique characteristics of identified general landscape types. Tree canopy and intermittent stream preservation will be provided on the subject property, No Karst features were identified during a site visit conducted by the applicant's land engineer on 4/24/19, MSD has provided preliminary plan approval to minimize impact to the integrity of the regulatory floodplain; and

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WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 1: Housing** because the proposal incorporates a smaller lotting pattern to a homogenous R-4 area to allow for a variety of options, The proposal incorporates a smaller lotting pattern into a homogenous R4 area to allow for a variety of options. It may allow for a more convenient lotting pattern for individuals aging in place to afford the maintenance costs; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Housing** because The proposal incorporates a smaller lotting pattern to a homogenous R-4 area to allow for a variety of options which adds an additional option for mixed-income in the area, the proposed district is located in a homogenous R-4 area and has little impact overall as the site could be developed for slightly fewer lots in the R-4 district; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 3: Housing** because the proposal incorporates a smaller lotting pattern to a homogenous R-4 area to allow for a variety of options, The proposed district replaces a single home with many homes, the incorporation of this district in the area breaks up the homogeneity of the area; thus, allowing for a new variety of housing options; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council to **APPROVE** the Change in zoning from R-4 to R-5, single family residential.

The vote was as follows:

YES: Commissioners Tomes, Daniels, Brown, Howard, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Smith, Lewis, and Peterson

Detailed District Development Plan

02:15:56 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on Plan 2040 Staff Analysis and the evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds 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 provided as the preservation of distinctive cultural features including

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landscapes, natural elements and built features will be provided. An intermittent stream is present and incorporated into the site design with detention and buffering; and

WHEREAS, the Louisville Metro Planning Commission further finds provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided as public sidewalks are provided where required and connectivity to adjacent subdivisions and future roadway corridors is provided; and

WHEREAS, the Louisville Metro Planning Commission further finds the subject site provides open space for tree canopy and intermittent stream preservation; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 further finds the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as it is for single-family residential development; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040. The proposal incorporates a smaller lotting pattern into a homogenous R-4 area to allow for a variety of options. Preservation of distinctive cultural features including landscapes, natural elements and built features will be provided. An intermittent stream is present and incorporated into the site design with detention and buffering. The site does not appear to contain distinctive cultural features. Existing roadway infrastructure is adequate to support the proposed density; now, therefore it be

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the District Development/Revised Preliminary Subdivision Plan subject to the abandonment of existing conditions of approval in case 17SUBDIV1016 and adoption of the 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

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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. 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 minor subdivision plat or legal instrument shall be recorded dedicating additional rightof-way as shown on the approved development plan A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - e. 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.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
3. 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.
4. 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

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development of the site, shall be responsible for compliance with these binding elements.

5. 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."
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. 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.
8. 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.
9. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
10. 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

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subdivision performance bond may be required by the planning Commission to fulfill this funding requirement

The vote was as follows:

YES: Commissioners Tomes, Daniels, Brown, Howard, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Smith, Lewis, and Peterson