

Planning Commission

Staff Report

February 16, 2023



Case No:	21-MSUB-0023
Project Name:	Flowervale Lane Subdivision
Location:	11523 Flowervale Lane
Owner(s):	DP Realty, LLC
Applicant:	Land Design and Development, INC
Jurisdiction:	Louisville Metro
Council District:	14 – Cindi Fowler
Case Manager:	Molly Clark, Planner II

REQUEST(S)

- Variances:
 1. Variance from section 5.3.1.C.4 of the Land Development Code to reduce the 20 ft railroad supplemental setback to 0 ft.
 2. Variance from section 5.3.1 of the Land Development Code to reduce the 15 street side yard setback from 15 ft to 0 ft.
- Waivers:
 1. Waiver from section 10.2.7 of the Land Development Code to reduce the Railroad landscape buffer area from 35 ft to 25 ft.
- Major Preliminary Subdivision plan with proposed Conditions of Approval

CASE SUMMARY/BACKGROUND

The subject site is 5.88 acres and is zoned R-4 single family in the Neighborhood Form District. The site is currently vacant. The applicant is proposing to create 19 buildable lots and with 3 non-buildable lots. Flowervale lane is a collector level road which will not allow the newly created lots to have direct driveway access; which is why the applicant is proposing a private 20 ft alley to create access from the rear. The proposed subject site is also adjacent to an existing railroad which also triggers additional supplemental setbacks and landscape buffers.

STAFF FINDING

Staff finds that the variance requests are adequately justified and meet the standards of review.

The staff supports the landscape waiver for the railroad supplemental setback due to the irregular shape of the lot and other supplemental setback required along a collector level road; but is concerned with how the planting requirements will be met since the proposed driveways off of the proposed 20 ft alley access easement will encroach into this buffer.

TECHNICAL REVIEW

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments. A neighborhood meeting was held with 2 neighbors in attendance.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from section 5.3.1.C.4 of the Land Development Code to reduce the 20 ft railroad supplemental setback to 0 ft:

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

STAFF: The requested variance will not adversely affect public health safety or welfare since the subject site is an irregular shaped lot and the setbacks are restricted by the adjacent railroad and the additional supplemental setback for collector level roads. There is a subdivision adjacent with the same configuration.

- (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 since there is a subdivision next door with the same access configuration and it is in character with the neighborhood.

- (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 since there is a subdivision next door with the same access configuration and it is in character with the neighborhood. The site is also restricted by two required supplemental setbacks due to the adjacent railroad and collector level road.

- (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 zoning regulations since the site is restricted by two required supplemental setbacks due to the adjacent railroad and collector level road. If the variance is not granted, the lot will have very limited buildable area.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises 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 since there are two supplemental setbacks required which is restricting the proposed buildable lots. The subject site is also an irregular shape which limits how the subdivision can be laid out.

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 reasonable use of the land since there are two supplemental setbacks required which is restricting the proposed buildable lots. The subject site is also an irregular shape which limits how the subdivision can be laid out.

3. The circumstances are 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 the applicant has not started construction and is requesting the variance.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from section 5.3.1 of the Land Development Code to reduce the 15 street side yard setback from 15 ft to 0 ft:

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

STAFF: The requested variance will not adversely affect public health safety or welfare since the subject site is an irregular shaped lot and the setbacks are restricted by the adjacent railroad and the additional supplemental setback for collector level roads. There is a subdivision adjacent with the same configuration.

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

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3. The circumstances are 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 the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not started construction and is requesting the variance.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.7. to reduce the required railroad supplemental landscape buffer from 35 ft to 25 ft:

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

STAFF: The waiver will not adversely affect adjacent property owners since there will still be screening provided along the railroad with the applicant installing fencing.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. This project will have the same access configuration as the existing subdivision to the southwest. Community Form Goal 1, Policy 20 calls to mitigate adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces. The applicant will be providing screening via a fence along the railroad.

- (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 since the subject site is an irregular shaped lot and is restricted by multiple supplemental setbacks due to being adjacent to a collector level road and the railroad. If the waiver is not granted, that leaves very little room for homes to be built on each proposed buildable lot.

- (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 applicant has not incorporated other design measures that exceed the minimums of the district or compensate for non-compliance with the requirements to be waived as the area proposed for the 25 ft railroad supplemental landscape buffer will be located in an area where the proposed driveways will be located for each buildable lot. Staff is concerned that all the required plantings will not be able to be provided.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance** from section 5.3.1.C.4 of the Land Development Code to reduce the 20 ft railroad supplemental setback to 0 ft. (22-VARIANCE-0149)
- **APPROVE** or **DENY** the **Variance** from section 5.3.1 of the Land Development Code to reduce the 15 street side yard setback from 15 ft to 0 ft. (22-VARIANCE-0149)
- **APPROVE** or **DENY** the **Waiver** from section 10.2.7 of the Land Development Code to reduce the Railroad landscape buffer area from 35 ft to 25 ft. (22-WAIVER-0203)
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan** with proposed **CONDITIONS OF APPROVAL**. (21-MSUB-0023)

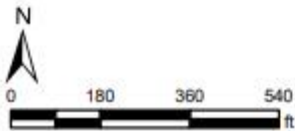
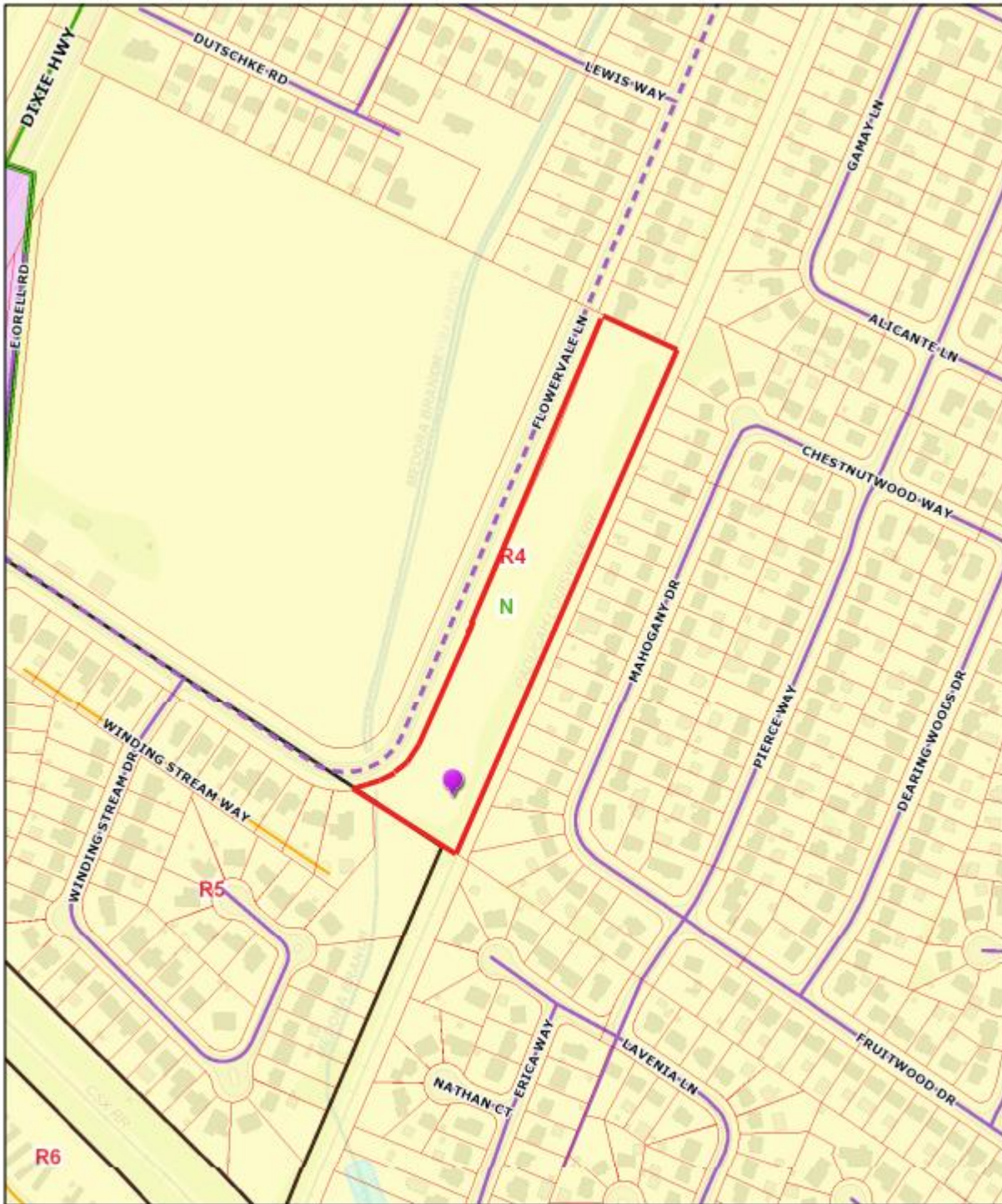
NOTIFICATION

Date	Purpose of Notice	Recipients
1/31/23	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 14

ATTACHMENTS

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

1. **Zoning Map**



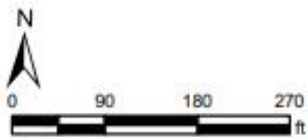
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This map is not a legal document and should only be used for general reference and identification

2. Aerial Photograph



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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 Tree Preservation Plan for approval by Planning and Design staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). 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.
3. 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.
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. 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.
6. 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.
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 subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.