

Planning Commission

Staff Report

April 21, 2022



Case No:	21-MSUB-0024/22-WAIVER-0057
Project Name:	8300 Cooper Chapel MRDI
Location:	8300 Cooper Chapel Rd
Owner(s):	GVPT Cooper LLC
Applicant:	LDG Development
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Jay Lockett, AICP, Planner II

REQUEST(S)

- **Waiver** of Land Development Code section 7.3.30.E to allow greater than 15% overlap of required rear yards and drainage easements for lots 1-22, 66-92, 125-129, 133-140 and 144-148
- **Major Preliminary Subdivision (Mixed Residential Development Incentive)** with review of land disturbing activity on slopes greater than 20% and Conditions of Approval

CASE SUMMARY/BACKGROUND

The applicant is proposing to utilize the Mixed Residential Development Incentive to create a subdivision with 148 single family lots and 128 multifamily dwelling units. The subject site is zoned R-4 in the Neighborhood form district and contains approximately 74.21 acres. The subject site contains a mix of vacant agricultural land and forested areas. Loworn Creek, a perennial stream flows across the rear of the site, and there is also an intermittent stream known as Durbin Branch that flows across the property nearer to the north end of the site. The site has some areas of steep slopes mainly within the stream banks, as well as known karst features. Kentucky Transportation Cabinet is currently in the process of realigning Cedar Creek and Cooper Chapel Rd along the front of the site, which makes proposed lots 90-92 non-buildable until the state project is complete and final grading is analyzed on those sites.

STAFF FINDING

The subdivision is compliant with the Land Development Code, except where the waiver is requested. The applicant has met all requirements of the Mixed Residential Development Incentive to allow reduced lot sizes and multifamily housing units in the R-4 zoning district. The proposed development minimizes disturbance of environmentally sensitive areas on the subject site and meets all tree canopy preservation requirements.

TECHNICAL REVIEW

The proposed subdivision includes disturbance of slopes in excess of 20%. Land Development Code, section 4.7.5 provides that Land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the provided standards of this part. A staff analysis has been included in this report for the Planning Commission's consideration.

Mixed Residential Development Incentive Compliance per LDC 4.3.20:

Under the Mixed Residential Development Incentive (MRDI) Multi-Family & Two-Family Dwellings may be considered a Permitted Use with Special Standards in the R-4 & R-5 zoning districts in conformance with the standards found in LDC 4.3.20. The standards establish a point system relating to various parts of the development. All development proposals must obtain at least one point each from Category A: Multi-Family and Category B: Affordable Units. Other points are available and density bonuses may be applied if a development is awarded at least 8 points. The proposed development has a net density less than the 4.84 allowed per the R-4 zoning district.

Category A Multifamily Dwellings Total units: 276. MF Units 128 (46%) 2 Points
Category B Affordable units: Total units: 276. Affordable Units: 136 (49%) 1 Point
Other incentives: Open Space greater than 30% (30.51/72.54 acres 42%) 1 point
Average lot size: 10,901 SF (Minimum 9,000 SF)
Net Density: 3.72 DU/Ac (4.84 Max Allowed)

INTERESTED PARTY COMMENTS

Staff has heard from the Office of Metro Council District 23 as well as the City of Heritage Creek that they do not wish a connection to be made to the stub street of Fantasy Trail to the south of the site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.E TO ALLOW MORE THAN 15% OF THE REAR YARD TO BE OCCUPIED BY AN EASEMENT

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

STAFF: The waiver will not adversely affect adjacent property owners as the rear yards overlap with easements that will only affect the property owners of the new lots.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as all lots will still have adequate private yard area, as well as access to shared amenities within the development.

- (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 as the locating of sewer and drainage infrastructure is largely dictated by topography and grading considerations. The applicant has taken care to reduce disturbance of environmentally sensitive areas on site by utilizing a more compact development pattern.

- (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 provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by

requiring the applicant to move the easement or extend the rear yards, either of which would reduce the usability of the property

STANDARD OF REVIEW AND STAFF ANALYSIS FOR LAND DISTURBING ACTIVITIES ON SLOPES GREATER THAN 20%

- (a) The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,

STAFF: A geotechnical review was completed for the site by Greenbaum and Associates and no significant concerns with respect to slope instability or substantial erosion were observed on these scattered lots. There are several karst features identified on the preliminary plan, and the geotechnical report lays out detailed construction techniques with respect to karst features, shallow rock and steep slope areas. Overall, the design and layout appear to be the minimum necessary to accommodate the proposed use of the site.

- (b) Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,

STAFF: The final location of all utilities will be determined prior to the recording of the record subdivision plat. The preliminary location of drainage features has received approval from the Metropolitan sewer District.

- (c) The Planning Commission may approve the activity if the geotechnical report opines and demonstrates that:

a. The slope's ground surface and subsurface are not unstable;

b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on- site and on adjacent lands; and,

c. If a geotechnical report is required, the applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.

STAFF: In general, the geotechnical report opines that the on-site slopes in the observed areas were stable at the time of observation. It provides that disturbance of slopes should not exceed the limits of evaluation in the report. Construction measures to maintain stability have been provided and should be incorporated into the construction of all new homes and the life of those homes.

- (d) The activity is in keeping with the Comprehensive Plan.

STAFF: The Comprehensive Plan calls for the integration of natural features into the pattern of development and that proposal should respect the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems. In general, preliminary soil and slope evaluation demonstrates that the proposal is in conformance with the aforementioned policies of the Comprehensive Plan as construction methods have been provided to minimize property damage and environmental degradation related to disturbance of steep slopes. While some buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes and karst features.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision** with land disturbing activity on slopes greater than 20% and Conditions of Approval

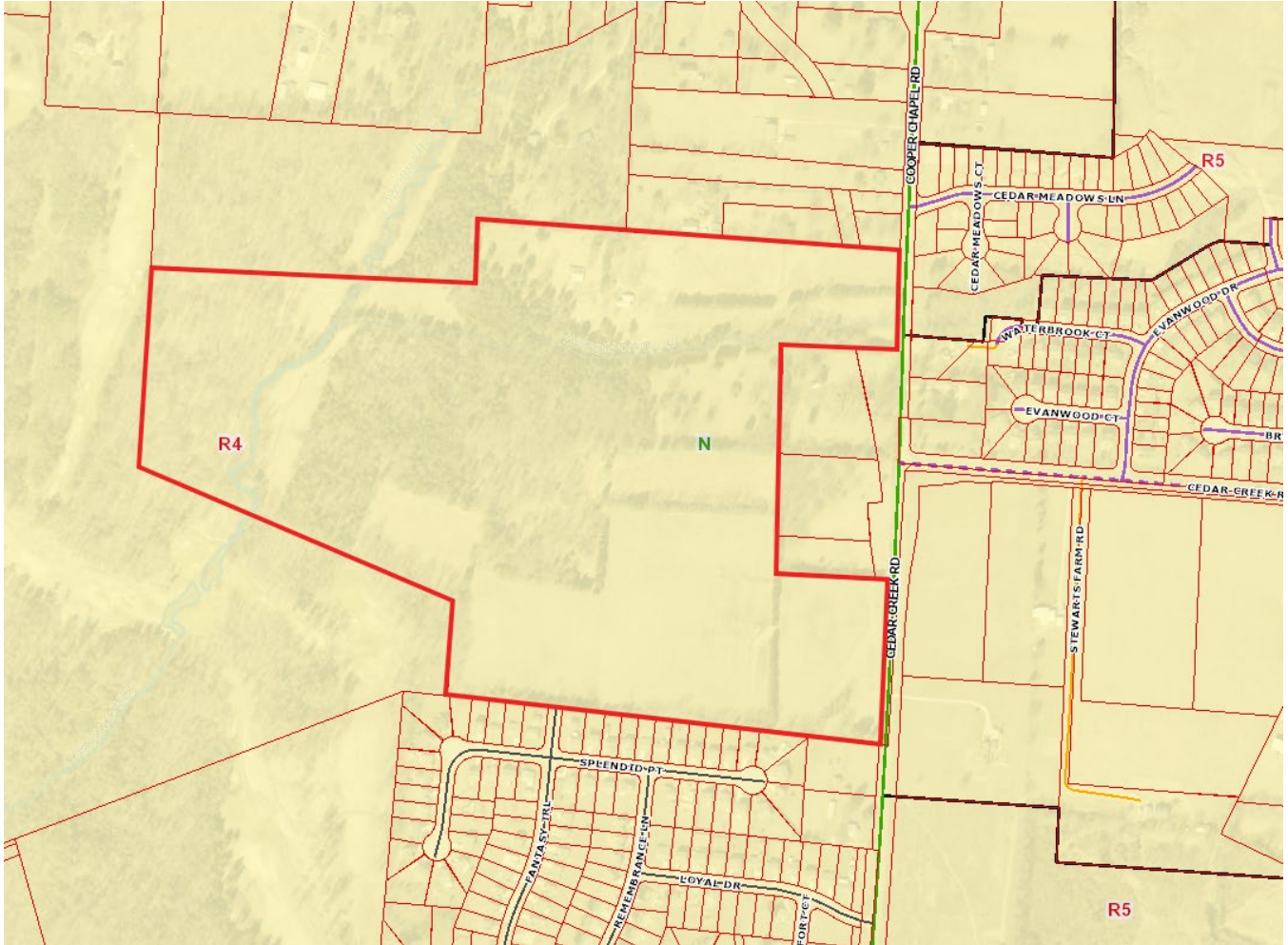
NOTIFICATION

Date	Purpose of Notice	Recipients
4-7-21	Hearing before PC	1 st tier adjoining property owners and residents Other attendees to neighborhood meeting Registered Neighborhood Groups in Council District 23
4-11-21	Hearing before PC Notice with corrected site address sent	1 st tier adjoining property owners and residents Other attendees to neighborhood meeting Registered Neighborhood Groups in Council District 23

ATTACHMENTS

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

1. Zoning Map



2. Aerial Photograph



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 plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. 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.
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. 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.
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 larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
9. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan

shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.

10. 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.
11. 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.
12. 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.
13. If proposed, the signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
14. 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."
15. The development shall be constructed in accordance with the techniques outlined in the Greenbaum and Associates Geotechnical Report dated January 24, 2022.
16. Lots 90-92 shall not be built upon or recorded until such time that the KYTC realignment of Cooper Chapel Rd and Cedar Creek Rd are complete. The Planning Commission or committee thereof shall review information relating to the final grading and constructability of those lots prior to approval of a record subdivision or minor plat creating those lots.
17. All buildings constructed shall be of an architectural style which will harmonize with other buildings in the same neighborhood. Diversity Housing units shall be constructed with exterior materials and architectural designs that are consistent with the materials and designs of the market rate units in the project.
18. No more than 50% of one type of housing (single family/multi-family) may be developed until at least 50% of the other type of housing has been developed. Also, 50% of the designated affordable units must be constructed by the time 50% of the total units in the development have been constructed. These calculations shall be based on the number of building permits issued.
19. The developer/owner shall be responsible for submitting an annual report to Planning & Design Services staff at 12-month intervals from the date of the recording of the record plat, until all affordable owner-occupied units have been issued building permits. The annual report shall identify the name of the subdivision/development, the plat book and page number of the record

plat if applicable, the lot/unit numbers, the lot/unit addresses, and the sale price and/or rental rates of the designated affordable units. The annual report shall indicate separately the number of building permits issued for single-family and multi-family dwellings. New lots may not be recorded and building permits shall not be issued for any unit on the subject site if the required annual reporting is not up-to-date.

20. For a period of 15 years after the last affordable rental unit building permit has been issued, the developer/owner or assigns shall submit annual reporting as described in Condition of Approval 19 and Land Development Code section 4.3.20.E.7. Failure to update the annual report shall be subject to enforcement per Land Development Code section 11.10.