

**PLANNING COMMISSION MINUTES**  
**August 20, 2020**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0005**

Request: Change in zoning from R-4 to R-5, with Detailed District Development Plan, Preliminary Subdivision Plan and Binding Elements

Project Name: Villages of Heritage Creek

Location: 10001 Cedar Creek Road

Owner: Virgil and Frankie Slaughter

Applicant: Grand Communities LTD

Representative: Mindel Scott and Associates; Bardenwerper, Talbott and Roberts PLLC

Jurisdiction: Louisville Metro

Council District: 22- Robin Engel

**Case Manager: Julia Williams, AICP, Planning Supervisor**

**NOTE: COMMISSIONER MIMS HAS RETURNED AND WILL VOTE ON THIS CASE**

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:**

01:11:22 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

01:16:56 Commissioner Peterson asked what the status is for the entrance road not lining up with Loyal Dr. Ms. Williams said the applicant has worked with KTC to determine the best location or to approve the location of the entrances. KTC had no issues with it lining up.

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

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223  
Nathan Wright, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219  
Larry Webb, Mayor of city of Heritage Creek, 111400 Courage Court, Louisville, Ky.

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

01:17:56 Mr. Talbott gave a power point presentation. The city of Heritage Creek surrounds 3 of the 4 sides of the property and they're in favor of this project. The entrance can't be moved because of power lines and poles. The state has approved it 'as is'. This case has been on hold since COVID-19 started and is now ready to move forward.

01:26:36 Mr. Wright stated they will be providing ample amount of landscaping following the Land Development Code (LDC). The existing pond will be used as detention and we will work with MSD. There will be a lot of open space and plantings along Cedar Creek Rd.

01:29:42 Mr. Talbott showed a mixture of homes. A traffic study was completed by Diane Zimmerman. There is one letter change from C to D - intersection in the p.m. A left turn lane is required at the entrance and will be provided.

01:34:17 Mayor Webb said he is in full support.

01:34:54 Commissioner Carlson asked Mayor Webb if when Heritage Creek was constructed, were there any requirements that the homes need to be all brick? Mayor Webb answered, there was an agreement with the airport that types 1, 2 and 3, smaller houses, had to be all brick. If there were 2-story houses, they had to be 75% brick. It was in the deed restrictions. The proposed property is not part of the city and the deed restrictions can't be forced on them.

01:35:59 Commissioner Carlson asked the applicant if there are any plans to agree to certain materials (brick) to be consistent with the city of Heritage Creek. Mr. Talbott said he showed the pictures at the neighborhood meeting and the people are in support. This project is not bound by the deed restrictions. Mayor Webb added, it's left up to the home buyer if she/he wants brick or not.

**Deliberation**

01:39:47 Planning Commission deliberation.

**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.**

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**Zoning Change from R-4 to R-5**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district is for low-density residential. It is not a high density use necessitating location near major transportation facilities; buffer yards and setback will be in compliance with the LDC; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets 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 finds that the proposal meets Land Use & Development Goal 3: Community Form because, the site is not located in 100-yr floodplain and no wetlands have been indicated. MSD comments have been addressed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the site does not appear to contain distinctive cultural or natural features that will not be retained; the site does not appear to contain distinctive historic resources; and

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets 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 finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district is for low-density residential on a vacant lot within an existing development. All multi-modal options are available or are being accommodated on the site or within the area; existing roadway infrastructure is adequate to support the proposed density; Transportation Planning and KDOT have reviewed the proposal; Transportation Planning approved the proposal. KTC recommendations have been incorporated into the proposal; public

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roadways and sidewalks are proposed; no access to high speed roadways is provided; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets 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 fire-fighting purposes as evidenced by adjacent development; MSD has no issues with the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the site has 41% tree coverage. 5% of the existing trees will be preserved; karst features are found on the site and are identified on the plan; MSD has no issues with the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal incorporates a variety of housing styles into the area by providing an alternative housing type for single-family residential occupancy; the proposal promotes housing options and environments that support aging in place as an alternative housing type for single-family residential occupancy and common maintenance is typical of the type of style proposed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal provides inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area as an additional housing type is being added to the areas current mixture; the proposal is for single family lots within a single family area. There are no commercial activity centers or employment centers in the vicinity. The proposal extends the existing sidewalks in the area along the sites frontage. The site is located in a residential activity area; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal incorporates another housing options into the area that encourages the provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro; the proposed district is located adjacent to an existing residential area; the incorporation of this district in the area encourages a variety of housing types and occupancy types within the area which increases the ability to provision clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 1, and specifically with Policies 2.1, 3.1.3, 4, 5, 7, 9, 10, 11 because the site is located in the Neighborhood Form District which encourages a diversity of housing types, ranging from low-density residential to higher density providing a range of housing opportunities, making it appropriate density, scale, design and use for the area; this proposed development and the rezoning from R-4 to R-5 is compatible and in keeping with the current zoning and use of the surrounding properties and those in the area, but at the same time provides some mixture of density; the plan also utilizes appropriate landscaping buffers from differing adjoining uses; the surrounding neighborhood properties are zoned R-4 as is the subject property currently; the proposed plan is an extension of the existing Heritage Creek Subdivision; and because the DDDP demonstrates that the proposal attempts to provide screening and buffering, to the extent possible; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 2, and specifically with Policies 2.1 and 9 because the proposed plan proposes uses, density and design that is compatible with adjacent and surrounding areas as well as subdivisions; and because the proposed lots are integrated with two other sections of Heritage Creek Subdivision with connecting roadways and stubs to adjacent undeveloped properties; it has centrally located open space with a lake and preserved tree masses as well as a scenic buffer along Cedar Creek Road; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 3, and specifically with Policies 1, 9, 10 and 13 because the proposed development has been designed to preserve the open space areas as shown on the plan, which provide usable active and passive recreation areas for the residents, while at the same time providing a visual and spatial buffer to the neighboring residents; this open space areas were also designed to be in areas that protect the natural features on the property and reduce the impacts of stormwater drainage; these open spaces will be owned by the proposed owners in common and maintained by the homeowners association; the site is not located in a 100-year floodplain and no wetlands are present on the site; and there are no wet or highly permeable soils, severe, steep or unstable slopes on the subject property that would create erosion problems; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the proposal complies with all of the applicable Objectives and Policies of Goal 4 specifically Policies 2 and 3 because

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there are no distinctive cultural or natural features that will not be retained and their or no distinctive historic resources on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed zone change complies with all of the applicable, Objectives and Policies 1 and 4 of Goal 1, because this proposed rezoning and DDDP will serve those who want to live in close proximity to the Cedar Creek Road corridor; sidewalks are being provided along Cedar Creek Road for safe pedestrian access; as previously stated, this proposed subdivision is located in close proximity to the Bardstown Road marketplace corridor providing convenient access to goods and services, as well as the employment centers in the area; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 2, and specifically with Policies 3, 4, 5, and 6, because the access to this single family development is via a primary collector road (Cedar Creek Road) which contains many other single family residential homes; connections into the adjoining subdivision the north and south and stub streets are provided for future development east, north, and south of the site; the entrance along Cedar Creek Road has been reviewed by Transportation Planning for appropriate sight distances on this primary collector road; and the internal streets were designed to maximize both the pedestrian connectivity and sense of place, but also to provide the best vehicular connectivity with least impervious surface; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 3, and specifically with Policies 2, 3, 5, 6, 7, 8, 9, 10 and 21, because this proposed single family development will provided needed infill housing very close to the activity centers along Bardstown Road, with multiple access points to the Watterson Expressway for connection throughout Metro Louisville; the location of this subdivision with close proximity to Bardstown Road activity centers will provide those employed in the area with an opportunity to purchase a new home; as such, many of the residents will be able to work in very close proximity to and their customary marketplace; housing is needed in Louisville Metro to allow its continued growth in corridors like Bardstown Road to reduce vehicle miles traveled for those moving to the area through its proximity to the previously mentioned employment centers and marketplace options; the subject property's close proximity to the above will also help eliminate multiple automobile trips (vehicle miles travelled) for such services; due to this development's close proximity to public transportation options along Bardstown Road, as well as the opportunity for pedestrian and bicycle travel, this proposal will have far less demand on the public transportation network than a new development in the outlying areas of Louisville Metro; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 2, and specifically with Policies 1, 2, and 3 because the subject property is currently served by existing utilities with sufficient capacity for this proposed development as has been confirmed through all utility providers through this rezoning process; these confirmations specifically include the Louisville Water Company's confirmation of sufficient water service capacity and the Metropolitan Sewer District's confirmation of adequate sanitary sewer capacity; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 1, and specifically with Policies 5, 17 and 21 because the proposed development will add new native species landscaping as shown on the development plan and as demonstrated on the landscape plan that will ultimately be prepared and submitted for approval; there are no streams or existing groundwater on the subject property and the surface water runoff will be improved from its current condition; the added detention and water quality unit will not only help mitigate the impacts of this development but likely help with any existing floodplains; and in accordance with LDC 4.9 a karst survey was performed by Travis Brown on January 14, 2020 and existing karst features will be identified and addressed on construction plans which must be reviewed and approved by MSD; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 1, and specifically with Policies 1, 2, and 3, because the proposed plan will add to the variety of housing types in the area providing more options in a newer home on a smaller lot with less maintenance obligations which support aging in place; and it is located in close proximity to the Bardstown Road corridor which provides goods, services including medical offices and other supportive services as well as transportation options; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 2, and specifically with Policies 1 and 2 because its design does encourage inter-generational and mixed-income development that is connected to the existing neighborhood and surrounding area within proximity to multi-modal transportation and amenities providing neighborhood goods and services; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed zone change complies with all of the applicable Objectives and Policies of Goal 3, including Policies 1, 2, 3 and 7 because the proposed development provides a variety of ownership and unit costs with an opportunity for people to live in quality, variable priced housing in this area of Metro Louisville and it will not displace existing residents with a plan providing smaller lot sizes to enable affordable housing; and

**WHEREAS**, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books, on the approved Detailed District Development Plan/Preliminary Subdivision Plan, this application also complies with all other applicable Goals of the 2040 Plan.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to R-5, Single Family Residential to property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe**

**District Development Plan/Preliminary Subdivision Plan**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, existing karst features have been identified on the plan. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

**WHEREAS**, the proposal indicates 3 open space lots; and

**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



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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 roadways; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the District Development Plan/Preliminary Subdivision Plan, **SUBJECT** to the following 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 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.
3. 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.
4. 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.

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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. 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.
8. 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.
9. 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.
10. 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.

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11. The signature entrance (if applicable) shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
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.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe**