

PLANNING COMMISSION MINUTES
January 21, 2021

PUBLIC HEARING

20-ZONE-0074

Request: Change in zoning from R-4 to R-7 with detailed district development/revised major preliminary subdivision plan
Project Name: 6106 S. Watterson Trail
Location: 6106 S. Watterson Trail
Owner: Clarence and Lucille Schmitt
Applicant: Highgates Development
Representative: Mindel Scott
Jurisdiction: Louisville Metro
Council District: 23 – James Peden
24 – Madonna Flood
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:

02:41:48 Joel Dock provided an overview of the request and showed a PowerPoint presentation (see staff report and recording for detailed presentation). The applicant is requesting a change in zoning from R-4 to R-7 for a mixed-use development containing 240 multi-family residential units and 67 single-family units utilizing the steep slope development transfer regulation. The site was recently approved for a 128-lot single-family residential subdivision. The proposal appears to be in compliance with Plan 2040 and the Highview Neighborhood Plan.

Commissioner Jeff Brown asked about a potential binding element to cap the number of building permits until the second access point is constructed.

The following spoke in favor of this request:

David Mindel, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219
Curtis Mucci, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219
Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059
Brent Hackworth, 7301 Monte' Circle, Louisville, Ky. 40219

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Summary of testimony of those in favor:

Curtis Mucci, Mindel Scott & Associates, spoke on behalf of the applicant and presented a PowerPoint presentation (see video for details). Mr. Mucci testified there has been some change in the area to show the area has been in transition and the proposal is in keeping with the surrounding development. The presentation provided renderings of the proposed buildings and proposed landscaping. There will be buffering against some of the surrounding properties. The applicant proposes to widen South Watterson Trail to three lane and provided a rendering of that proposed improvement.

The commissioners asked questions of the applicant.

Brett Hackworth, answered a question regarding the design, character, and materials used for the buildings. These buildings have been designed to be in compliance with the Highview recommendations and a variety of building colors will be used to help differentiate the buildings. Applicant agreed to a binding element saying as much.

Diane Zimmerman answered a question regarding the traffic study. The traffic study only assumed the connection to Watterson Trail and not the other stub connections because it can't be guaranteed that those will be constructed. Ms. Zimmerman also explained the traffic distributions that were used for the study. According to the study, drivers would be allowed to turn left onto Hurstbourne without a signal.

David Mindel said on the approved single family plan all the traffic goes to Watterson Trail because there isn't a connection to Hurstbourne on that plan.

Deliberation

03:26:24 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.

Zoning Change from R-4 to R-7

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.

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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 higher intensity district is located between an arterial roadway and collector level roadway within proximity to major employment centers (Fern Valley Road/Poplar Level Road/GE Appliance Park), activity centers (Bardstown Road/Highview Town Center/Outer Loop), and transit corridors (Bardstown Road/Shepherdsville Road, Poplar Level Road); TARC service does not currently operate immediately adjacent to the subject site along S. Hurstbourne from Bardstown Road to Fegenbush Lane. It could be expected that increased demand will drive the location of additional or expanded routes and service; the subject site is adjacent to similar levels of intensity and density (proposed and approved development). The proposal allows for a transition from higher density to lower density moving from the arterial roadway.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the subject property does not contain any existing development.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the subject property contains areas of steep slopes which have been preserved under the development potential transfer regulations of the Land Development Code. MSD has reviewed the proposal and preliminary approval has been received.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, tree canopy compliance with Chapter 10 of the LDC will be provided to preserve landscape features; documentation of any historic resources on the property should be provided prior to demolition. If structures are over 50 years old and determined eligible for the National Register, as per Wrecking Ordinance Section 150.110, there will be a required 30-day hold on the issuance of the permit.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, The proposed higher intensity district is located between an arterial roadway and collector level roadway within proximity to major employment centers (Fern Valley Road/Poplar Level Road/GE Appliance Park), activity centers (Bardstown Road/Highview Town Center/Outer Loop), and transit corridors (Bardstown Road/Shepherdsville Road, Poplar Level Road). TARC service does not currently operate immediately adjacent to the subject site along S. Hurstbourne from Bardstown Road to Fegenbush Lane. It could be expected that increased demand will drive the location of additional or expanded routes and service.

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the proposed district is located between an arterial and collector level roadway. Lower intensity districts in the area of the subject site are opposite the collector level roadway from the subject site. No nuisances would be created by access.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district is appropriately situated to allow a transition of higher intensity/density along Hurstbourne Parkway to lower density uses at Watterson Trail. The proposed district is near employment centers; the proposed higher intensity district is located between an arterial roadway and collector level roadway within proximity to major employment centers (Fern Valley Road/Poplar Level Road/GE Appliance Park), activity centers (Bardstown Road/Highview Town Center/Outer Loop), and transit corridors (Bardstown Road/Shepherdsville Road, Poplar Level Road). TARC service does not currently operate immediately adjacent to the subject site along S. Hurstbourne from Bardstown Road to Fegenbush Lane. It could be expected that increased demand will drive the location of additional or expanded routes and service; all improvements and dedications will be provided as required; No direct access to high speed roadways is provided for individual units. Multiple access points serving the development will be provided.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the development is located in an area served by or capable of being served by utilities; the development will have an adequate supply of potable water and water for fire-fighting purposes; MSD has reviewed the proposal and preliminary approval has been received.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, tree canopy compliance with Chapter 10 of the LDC will be provided to incorporate the unique characteristics of the landscape; the site contains steep slopes and potential karst terrain. Steep slopes have been identified and no karst features were identified upon inspection by the applicant; MSD review and approval has been received to minimize negative development impacts to the integrity of the regulatory floodplain.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed district provides for the appropriate location of housing types which transition from higher densities to lower densities moving from Hurstbourne Parkway; the proposed district and location support aging in place as services and amenities are located within proximity of the subject site at Outer Loop and Bardstown Road. Each road also provides for transit connectivity. TARC service does not currently operate immediately adjacent to the subject site along

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S. Hurstbourne from Bardstown Road to Fegenbush Lane. It could be expected that increased demand will drive the location of additional or expanded routes and service.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal continues the existing pattern of mixed-intensity and density along the corridor that is connected to the neighborhood and nearby centers; the proposed district is located between an arterial roadway and collector level roadway within proximity to major employment centers (Fern Valley Road/Poplar Level Road/GE Appliance Park), activity centers (Bardstown Road/Highview Town Center/Outer Loop), and transit corridors (Bardstown Road/Shepherdsville Road, Poplar Level Road). TARC service does not currently operate immediately adjacent to the subject site along S. Hurstbourne from Bardstown Road to Fegenbush Lane. It could be expected that increased demand will drive the location of additional or expanded routes and service.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed district encourages fair and affordable housing by allowing a variety of ownership options and unit costs throughout Louisville Metro. The district expands opportunities for people to live in quality, variably priced housing in locations of their choice by enabling the provision of affordable housing in dispersed locations throughout Louisville Metro. The proposed district follows existing patterns along the corridor and allows for a transition in intensities moving from S. Hurstbourne Parkway; the proposed district allows for an increase in residential occupancy where the site is primarily vacant; the proposed zoning district allows for a variety of styles and methods of housing to provision fair and affordable housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to Metro Council the change in zoning from R-4, Single Family Residential to R-7, Multi-family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

ABSTAINING: Commissioner Sistrunk

**Detailed District Development/Revised Major Preliminary Subdivision Plan
(Development Potential Transfer)**

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

WHEREAS, 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; and

WHEREAS, safe pedestrian and vehicular connectivity is being provided to connect to adjacent development that is proposed or approved, and the current neighborhood; and

WHEREAS, 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; 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 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 provides for the appropriate location of housing types which transition from higher densities to lower densities moving from Hurstbourne Parkway. The proposal follows existing patterns along the corridor and allows for a transition in intensities moving from S. Hurstbourne Parkway; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040 as it is located between an arterial roadway and collector level roadway within proximity to major employment centers (Fern Valley Road/Poplar Level Road/GE Appliance Park), activity centers (Bardstown Road/Highview Town Center/Outer Loop), and transit corridors (Bardstown Road/Shepherdsville Road, Poplar Level Road). TARC service does not currently operate immediately adjacent to the subject site along S. Hurstbourne from Bardstown Road to Fegenbush Lane. It could be expected that increased demand will drive the location of additional or expanded routes and service. The proposal expands opportunities for people to live in quality, variably priced housing in locations of their choice by enabling housing choices in dispersed locations throughout Louisville Metro.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and revisions to the Major 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. No outdoor advertising signs, pennants, balloons, or banners shall be permitted on the site.
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. Prior to issuance of a permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit):
 - 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 development 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - d. A major subdivision record plat creating the lots and roadways as shown on the approved district development plan shall be recorded.
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.

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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. 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.
8. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
9. An encroachment permit and bond may be required by Metro Public Works for roadway repairs on all surrounding access road to the subdivision site due to damages caused by construction traffic activities.
10. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
11. 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.

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12. Open space/conservation 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.
13. 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.
14. 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.
15. Building envelopes shown on single-family residential lots shall be substantially similar to those shown on the preliminary plan and must be shown and recorded on the record subdivision plat. Limits of disturbance shall also be shown and recorded with the record subdivision plat.
16. Prior to the issuance of a building permit for a multi-family structure, review and approval by the Planning Commission or designee shall be required. Building materials shall vary in material and color across the development site.
17. Prior to the issuance of the building permit for the 200th dwelling, either single or multi-family, a second access connection shall be made to a collector level roadway or higher.

The vote was as follows:

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

ABSTAINING: Commissioner Sistrunk