

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

Request: Change in zoning from R-4 to R-6 with detailed district development plan, major preliminary subdivision (development potential transfer), and height variance

Project Name: 8300 Cooper Chapel Road

Location: 8300 Cooper Chapel Road

Owner: Toebbe Bernard Sr. Revocable Trust

Applicant: LDG Development, LLC

Representative: Dinsmore & Shohl LLC

Jurisdiction: Louisville Metro

Council District: 23 – James Peden

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

NOTE: COMMISSIONERS DANIELS AND PETERSON LEFT

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:

04:52:01 Joel Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore and Shohl, 101 South 5th Street, Louisville, Ky. 40202
Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059
Kevin Young, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

Summary of testimony of those in favor:

05:07:32 Cliff Ashburner gave a power point presentation. This is a mixed residential proposal and the plan works for the property to the south, Heritage Creek, as well as creating a development pattern for the property to the north. The proposal provides a variety of housing choices. There are infrastructure issues but there's a plan for dealing with those.

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

05:13:03 Diane Zimmerman explained the traffic study. All the intersections evaluated are operating at acceptable levels of service (with A, B and C's). A southbound right turn lane would be required at the southern entrance and the new agreed upon right turn lane at the Beulah Church intersection are the required improvements. Also, Ms. Zimmerman explained the new road alignment.

05:18:31 Kevin Young discussed the intermittent streams and trees being preserved.

Cliff Ashburner said the area is very walkable.

Commissioner Brown asked if right-of-way is being dedicated and sidewalks being provided at the last entrance. Kevin Young said no but they will if necessary. It's open space now but can be added to the plan.

Commissioner Carlson asked if they are going to build the culvert. Mr. Ashburner said yes.

Kevin Young discussed relocating the pump station (Phase 1).

The following spoke in opposition to this request:

Larry Webb, 11400 Courage Court, Louisville, Ky. 40229
John Wilburn, 1114 Reality Trail, Louisville, Ky. 40229

Summary of testimony of those in opposition:

05:27:30 Larry Webb is concerned about the traffic. They want to use Fantasy Trail – it can be closed by the legislative body – neighbors don't want it open. Residents don't want it used as a cut-through.

05:32:11 John Wilburn said the proposal may be affordable housing (accepting vouchers). There's nothing in walking distance. Safety is an issue and the only ones benefitting from this proposal is the developer.

Rebuttal

05:35:21 Cliff Ashburner said some people may not want to live in a house and an apartment will be the best for them. Traffic improvements will be made. Commissioner Carlson asked if there has been any discussions with TARC for coming to the area. Mr.

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

Ashburner said he doesn't know. Joel Dock listed the TARC stops in the area. TARC follows demand. Commissioner Brown gave an update on the state plan.

Deliberation

05:46:30 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-6

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 higher density development is not located along a current transit line. However, the subject property is located between 2 major arterials, Bardstown Road and Preston Highway, which provide for a variety of 1st and 2nd order goods and services, as well as employment opportunities are available. The Commerce Crossing business park I located at the intersection of Cooper Chapel and Preston Highway. Adequate infrastructure will be facilitated by KYTC improvement along the site frontage; all transition between uses will be provided as required by the Land Development Code. The rezoned area is centrally located within the site and encircled by development that is similar to adjacent developed an undeveloped land; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the new development will provide residential uses at dispersed locations throughout Louisville Metro in accordance with the Land Development Code; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the subject property contains steep slopes and waterways that will be left undisturbed or mitigated during construction. Any costs incurred through mitigation of slopes will be the property owners/developer's responsibility. Waterways will be undisturbed except for permitted perpendicular crossings and restoration is required of all stream banks; and

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, waterways will be preserved as required and incorporated into the design of the development; this site will be subject to the requirements of the Wrecking Ordinance Subsection 150.110 and a potential 30-day hold on the permit. Documentation of the structure may be required prior to wrecking; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed higher density development is not located along a current transit line but is located between 2 major arterials, Bardstown Road and Preston Highway, which provide for a variety of 1st and 2nd order goods and services, as well as employment opportunities are available. The Commerce Crossing business park I located at the intersection of Cooper Chapel and Preston Highway. Demand for transit and an efficient public transportation system is increasing in the general area as Bardstown Road and Preston Highway development with the areas around them; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the subject site is located along a primary collector roadway which serves to move traffic from local areas to major arterials; thus, the higher density proposed is appropriately located and will not create a nuisance of local residential neighborhoods; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed zoning district is not currently connected via transit, but demand is increasing at nearby major corridors as they and the areas that surround them develop. The development site will provision all necessary improvement to facilitate easy access by foot, car, bicycle, or transit. Commerce Crossing business park is located with proximity and a variety of other employers are present along nearby corridors; the project will provide all necessary improvements to ensure the transportation network is sufficient to provide access to and from the site and nearby areas; the project will provide all necessary improvements to ensure the transportation network is sufficient to provide access to and from the site and nearby areas. KYTC improvement along the frontage are being accommodated. Stub roadways will be provided to the north and the south as required by the Land Development Code; access to the site is from a primary collector roadway and no direct access to high speed roadway is provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the project will be served by existing utilities or capable of being served by public or private utility extensions; an adequate supply of potable water and water for fire-fighting purpose will

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

be available. Highview Fire District, station 3 is within proximity to the site; an adequate means of sewage treatment and disposal to protect public health and to protect water quality as MSD preliminary approval has been received and waterways will be protected as required; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, waterways will be preserved as required and incorporated into the design of the development. Tree canopy will also be provided as required. An area to the rear of the site and adjacent to the golf course will remain in open space and contains a protected waterway; Geotechnical and slope stability reports have been provided and incorporated into the record. All development on-site will follow the procedures and standards as laid out for development of such terrains in these reports to mitigate potential adverse impacts; impacts to the floodplain will be mitigated as required by MSD and waterways will be protected in accordance with applicable ordinances and standards from MSD and the Land Development Code;

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed zoning district and the pattern of development proposed encourages a variety of housing types in an area of homogenously developed single-family residential subdivisions between major activity corridors and with convenient access to public parks and recreational opportunities. Sidewalks are available to easily connect people to McNeely Park; the proposed district promotes environments that support aging in place as the district provides opportunities for individuals in transition or aging from nearby residences to remain in the community and have access to parks and recreation. Nearby corridors provide services and demand for transit is expected to increase with the development of the area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposed district increases opportunity for mixed-income and mixed-use development in an area that is primarily developed as single-family residential subdivisions. The development will be well-connected to the adjoining neighborhood to the south as stub roadways will be provided to connect and provide easy access to McNeely Park; The proposed development is not located along a current transit line but is located between 2 major arterials, Bardstown Road and Preston Highway, which provide for a variety of 1st and 2nd order goods and services, as well as employment opportunities. The Commerce Crossing business park is located at the intersection of Cooper Chapel and Preston Highway. Demand for transit and an efficient public transportation system is increasing in the general area as Bardstown Road and Preston Highway development with the areas around them. The site is within proximity to McNeely Park and recreational amenities; and

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposed district breaks up the R-4, single-family residential district that predominates the areas which reduces access to fair and affordable housing. The proposed district though greater density and smaller lot size standards increases opportunity and access to fair and affordable housing in dispersed location throughout Louisville Metro; no displacement will occur as a result of the proposal and the proposal will increase opportunity to provision fair and affordable housing; the proposed district breaks up the homogenous pattern of residential development in the area and increases opportunity to produce fair and affordable housing and the use of innovative methods to provision such 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-6, Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Howard, Mims and Lewis

NO: Commissioners Carlson and Clare

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Peterson, Seitz and Sistrunk

Variance from Land Development Code (LDC), section 5.3.1.C to increase the maximum height of structures on Tract 2 from 35' to 39'

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, the requested variance will not adversely affect public health, safety, or welfare as the proposed increased height does not impede the safe movement of vehicles or result in environmental degradation; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the difference between 35' and 39' is rather unremarkable; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the requested 4' height increase does not impede the safe movement of vehicles or result in environmental degradation;

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the increased height allows for increased height within residential units; and

WHEREAS, the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as a 35' height maximum applies to all R-6 zoning; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land for the reasons previously stated in these findings; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 site has not been developed and relief is being sought.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Variance from Land Development Code (LDC), section 5.3.1.C to increase the maximum height of structures on Tract 2 from 35' to 39'.

The vote was as follows:

YES: Commissioners Brown, Howard, Mims and Lewis

NO: Commissioners Carlson and Clare

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Peterson, Seitz and Sistrunk

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

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, the subject property contains steep slopes and waterways that will be left undisturbed or mitigated during construction. Any costs incurred through mitigation of slopes will be the property owners/developer's responsibility. Waterways will be undisturbed except for permitted perpendicular crossings and restoration is required of all stream banks. Tree canopy will also be provided as required. An area to the rear of the site and adjacent to the golf course will remain in open space and contains a

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

protected waterway. Geotechnical and slope stability reports have also been provided and incorporated into the record. All development on-site will follow the procedures and standards as laid out for development of such terrains in these reports to mitigate potential adverse impacts; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided as internal and external sidewalks will be provided. Stub roadways are shown to the north to allow future connection and a stub roadway from the south will be continued into the development; and

WHEREAS, sufficient open space is provided as all recreational open space requirements have been met and waterways are being protected; 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 proposal is compatible with the scale and site design of the area and future growth by way of general compliance with the Land Development Code with the exception of an unremarkable increase in the maximum height from 35' to 39'; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to Plan 2040. While the site is not located along a current transit line, it is located between 2 major arterials, Bardstown Road and Preston Highway, which provide for a variety of 1st and 2nd order goods and services, as well as employment opportunities. The Commerce Crossing business park is located at the intersection of Cooper Chapel and Preston Highway. Demand for transit and an efficient public transportation system is increasing in the general area as Bardstown Road and Preston Highway development with the areas around them. The subject site is located along a primary collector roadway which serves to move traffic from local areas to major arterials; thus, the higher density proposed is appropriately located and will not create a nuisance upon local residential neighborhoods. Further, the proposal increases opportunity and access to fair and affordable housing in dispersed location throughout Louisville Metro. It also provides opportunities for individuals in transition or aging from nearby residences to remain in the community and have access to parks and recreation.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development/Major Preliminary Subdivision Plan (Development

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

Potential Transfer) **ON CONDITION** that the development plan is updated to reflect the right-of-way dedication along the open space lot 1003 for a total of 40 feet from the centerline and the sidewalk within that public right-of-way abutting the lot 1003, **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. 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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
 - d. The materials and design of proposed structures on Tract 2 shall be substantially the same as depicted in the rendering as presented at the February 18, 2021 Planning Commission meeting. Final renderings must be reviewed and approved by Planning and Design Services staff. A copy of the approved rendering will be available in the case file on record in the offices of the Louisville Metro Planning Commission.
 - e. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded.
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 development of the site, shall be responsible for compliance with these binding elements.

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

5. 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.

6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

7. 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.

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. 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.

10. Single-family residential development on Tract 1 (development potential transfer) shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.

11. Prior to the recording of the record plat for any section or phase of Tract 4 copies of the recorded documents listed below shall be filed with the Planning Commission.

- a. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
- b. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
- c. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.

12. 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

PLANNING COMMISSION MINUTES
February 18, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0057

record subdivision plat. Limits of disturbance shall also be shown and recorded with the record subdivision plat.

13. The discovery of karst geologic features such as sinkholes, springs, sinkhole collapse features and caves shall be reported to the Planning Director or designee. All work within the area shall discontinue until such time as the applicant's engineer (geotechnical engineer) licensed in the State of Kentucky with experience in the review and analysis of karst geologic features practicing in accordance with KRS 322 has reported to the Planning Director or designee and the Planning Director or designee has approved the continuation of site disturbance and construction.

14. A right turn lane from westbound Cooper Chapel Rd. to northbound Beulah Church shall be constructed prior to the issuance of the first Certificate of Occupancy.

The vote was as follows:

YES: Commissioners Brown, Howard, Mims and Lewis

NO: Commissioners Carlson and Clare

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Peterson, Seitz and Sistrunk