

# Development Review Committee

## Staff Report

September 15, 2018



<b>Case No:</b>	18MOD1007
<b>Project Name:</b>	Shakes Run Modification
<b>Location:</b>	Shakes Run Subdivision
<b>Owner(s):</b>	Shakes Run Community Association, Inc.
<b>Applicant:</b>	Signature Green Properties, LLC.
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	19 – Julie Denton
<b>Case Manager:</b>	Jay Lockett, Planner I

### REQUEST(S)

- **Modification of Conditions of Approval**

### CASE SUMMARY/BACKGROUND

The subject site was approved under subdivision docket 10-38-05 for up to 485 buildable single family lots. As a concession to neighboring property owners in the area in order to buffer the development from existing agricultural uses, the developer agreed to a Condition of Approval that required a 30' buffer be maintained around the entire perimeter of the development:

24. *A 30-foot Tree Canopy Protection Area (TCPA) shall be provided along the perimeter of the entire development. Existing tree canopy and undergrowth shall be preserved in this area and indicated on a tree preservation submitted to Planning Commission staff for approval.*

Subsequent to the approval of the subdivision, the property was the subject of multiple violations of this condition, where vegetation and trees were removed. As part of a settlement resulting from these violations, additional Conditions of Approval were approved for the subdivision by the Land Development and Transportation Committee:

30. *A 30-foot wide Tree Canopy Protection Area (TCPA) shall be permanently preserved along the perimeter of the entire development property regardless of current, or future, property ownership and/or control. All vegetation shall be preserved and protected in this area except for the removal of dead or declining trees that pose a public safety threat. The area shall be indicated on a preservation plan submitted to the Planning Commission. Canfield will install tree protection fencing along wooded portions of the 30-foot perimeter TCPA in the area or section of active development to protect these areas from disturbance, grading, clearing, mowing, and/or construction activity. Canfield will install in 30 days and continually maintain tree protection fencing along non-wooded portions of the 30-foot perimeter TCPA to protect these areas from mowing, grading, clearing, and/or construction activity. The tree protection fencing shall be maintained until each section goes to record plat and markers referenced in paragraph 5 hereof are installed.*

32. *Prior to site disturbance in a particular area or section of the development, Canfield will install and maintain tree protection fencing around any interior TCPA's within that area or section.*
33. *Once a particular area or section of development is substantially completed, Canfield Development will install marker signs, to be approved by Planning and Design Services staff, at least every 60 feet with a minimum of one marker per lot, along the inside edge of 30-foot perimeter TCPA denoting the area as a protected area. The signs shall be consistent with the size and scale of signs used by the Jefferson County Environmental Trust to denote a conservation easement, and shall indicate that the area is a permanently preserved area and no mowing or clearing is allowed.*

The applicant is seeking to modify these Conditions of Approval in order to allow for the clearing of grass and undergrowth behind lots 1-5 of the subdivision.

### **STAFF FINDING**

The request would not result in any circumvention of the Land Development Code, but has not been adequately justified by the applicant.

### **TECHNICAL REVIEW**

The applicant has not submitted adequate justification for the request. Staff would further like to see suggested language that would allow for the limited mowing behind the lots in question, but still generally respect the intent of the buffer area around the bulk of the site.

### **INTERESTED PARTY COMMENTS**

Staff received an email from Dudley Wetherby expressing his opposition to any change in the buffer area around the development.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR MODIFICATION OF CONDITIONS OF APPROVAL**

- (a) 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;

STAFF: Tree canopy requirements of the Land Development Code will be provided on the subject site. The proposed changes will not violate the Land Development Code, but would lead to less native vegetation being preserved on the subject site than was originally agreed upon.

- (b) The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development are not affected by this request.

- (c) The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: The subject development conserves significantly more open space than required by the Land development Code.

- (d) 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;

STAFF: 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.

- (e) The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: 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.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The request conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

#### **REQUIRED ACTIONS:**

- **APPROVED** or **DENY** the **Modification of Conditions of Approval**

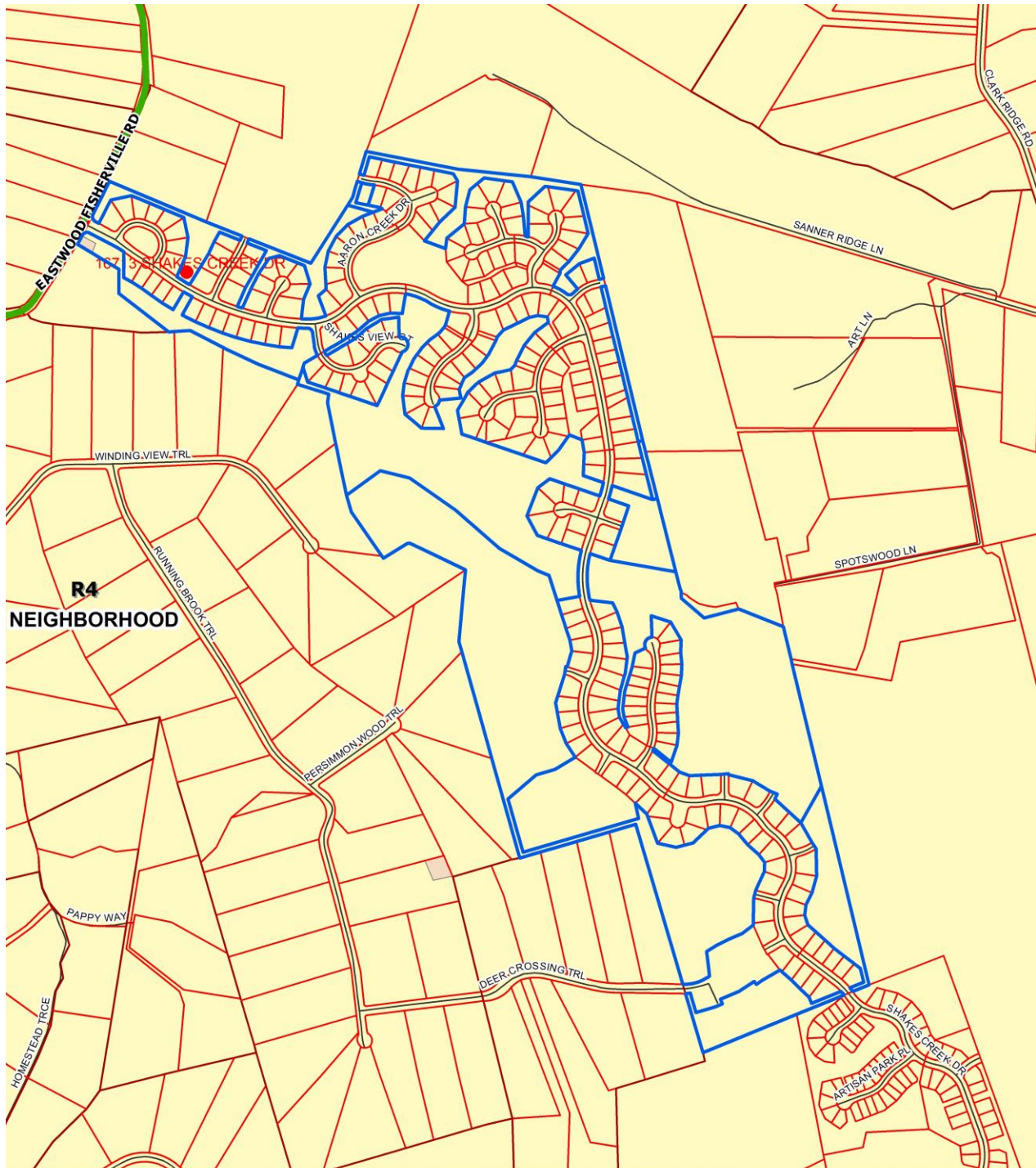
#### **NOTIFICATION**

Date	Purpose of Notice	Recipients
7-25-18	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 19

#### **ATTACHMENTS**

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

1. **Zoning Map**



18MOD1007  
feet  
780



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2. Aerial Photograph



18MOD1007  
feet  
780



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### **3. Existing 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. 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.
8. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1 of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As



trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.

9. The Tree Canopy Protection Areas surrounding the blue line stream on Open Space Lots 490 and 497 will be converted to Woodland Protection Areas prior to record plat approval and shall be indicated as such on the Approved Tree Preservation Plan.
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 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.
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.
12. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
13. 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."
14. The applicant shall provide language in the deeds of restriction describing the location of the Outer Buffer Zone along Shakes Run. The language shall state that no permanent structures or impervious surface coverages of greater than 100 s.f. are allowed in this zone as required in 4.8.6E of the Land Development Code. The form of such restrictions shall be approved by Planning Commission Counsel.
15. If sinkholes are found on the property or if ponds are to be filled on the site, a geotechnical report shall be conducted for the site and the results shall be submitted to Public Works and MSD for review prior to construction plan approval and the recommendations of the report shall be carried out during construction on the site.
16. The applicant shall obtain approval of a detailed landscape plan for the 30-foot Landscape Buffer Area along Eastwood-Fisherville Road. The landscape buffer area shall include a berm, hedge, fence or wall adequate to form an effective visual screen at least six feet in height. The landscape buffer area shall be maintained by the property owners association. The landscape plan shall be submitted for review and approval by DPDS staff prior to record plat approval.
17. A minor plat or deed of consolidation creating the proposed subdivision boundary will need to be recorded prior to recording of the record plat.

18. 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.
19. 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.
20. The number of lots recorded shall not exceed 50 until the Eastwood-Fisherville Road improvements are completed. Also, the number of building permits shall not exceed 199 until Street A (Shakes Creek Drive) and Deer Crossing Trail are connected (via Street D) and provide two points of entry to the subdivision.
21. A professional archaeological survey shall be performed to determine the boundary of the cemetery located on proposed Lot 488. Documentation of acceptance of the cemetery boundaries by the Historic Landmarks Commission or delegated staff persons shall be provided for Planning Commission and building permit agency files prior to initiation of any site disturbance activities. After the boundary has been approved, all buildings and structures other than fences and walls shall be set back at least 30 feet or another distance set by the Historic Landmarks Commission. Should the final boundary of the cemetery indicate that any road (including the subdivision entrance road) or buildable lot on the approved plan is encroaching into the cemetery boundary or the required buffer/setback around the cemetery, then the preliminary subdivision plan must be revised to eliminate this encroachment.
22. The inactive cemetery on Lot 488 shall be preserved and maintained as described in Section 4.4.6 of the Land Development Code. Ownership and maintenance of the cemetery shall be transferred to the homeowners association. A deed restriction in a form approved by the Planning Commission legal counsel shall be recorded acknowledging the location, site, ownership and maintenance of the cemetery.
23. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for Streets A, B, C, D and E. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
24. A 30-foot Tree Canopy Protection Area (TCPA) shall be provided along the perimeter of the entire development. Existing tree canopy and undergrowth shall be preserved in this area and indicated on a tree preservation submitted to Planning Commission staff for approval.
25. The developer shall provide written notification to potential lot purchasers that they adjoin an agricultural activity (the Heidi Sanner property) involving bee keeping and fowl raising before the sale of those lots. This notice shall also be provided in the recorded covenants and restrictions for the subdivision.
26. Prior to seeking construction plan approval for lots 37 to 42, 63 to 65, and 71 to 73, the developer will have representatives of LG&E field locate an existing underground gas transmission line. The owner shall provide LG&E with an easement for the underground transmission line and work with the utility company to ensure protection of the line, or relocation, during site construction. Additional building setbacks will be provided to these lots in accordance with Chapter 5.3.1, C.4 of the Metropolitan Land Development Code.



27. Written notification to first and second tier property owners shall be provided if there are any changes, additions or deletions to the approved preliminary subdivision plan.
28. The applicant shall be required to field locate the existing High Pressure Gas Line located along the common boundary with the Sanner property prior to construction plan approval. If the line crosses onto the proposed development the applicant must revise the preliminary subdivision plan to include the additional setback required by Section 5.3.1, C.4 of the Land Development Code.
29. No construction traffic shall be allowed to go through Derbyshire Estates.
30. A 30-foot wide Tree Canopy Protection Area (TCPA) shall be permanently preserved along the perimeter of the entire development property regardless of current, or future, property ownership and/or control. All vegetation shall be preserved and protected in this area except for the removal of dead or declining trees that pose a public safety threat. The area shall be indicated on a preservation plan submitted to the Planning Commission. Canfield will install tree protection fencing along wooded portions of the 30-foot perimeter TCPA in the area or section of active development to protect these areas from disturbance, grading, clearing, mowing, and/or construction activity. Canfield will install in 30 days and continually maintain tree protection fencing along non-wooded portions of the 30-foot perimeter TCPA to protect these areas from mowing, grading, clearing, and/or construction activity. The tree protection fencing shall be maintained until each section goes to record plat and markers referenced in paragraph 5 hereof are installed.
31. The pavement for the Street D stub road shall stop approximately 30 feet short of the Wetherby property (the right-of-way shall extend to the property line). This 30 foot area shall be maintained in a fashion similar to the TCPA on both sides of this right-of-way area. The 30 foot area shall be maintained by the homeowners association like an open space until the stub is fully extended.
32. Prior to site disturbance in a particular area or section of the development, Canfield will install and maintain tree protection fencing around any interior TCPA's within that area or section.
33. Once a particular area or section of development is substantially completed, Canfield Development will install marker signs, to be approved by Planning and Design Services staff, at least every 60 feet with a minimum of one marker per lot, along the inside edge of 30-foot perimeter TCPA denoting the area as a protected area. The signs shall be consistent with the size and scale of signs used by the Jefferson County Environmental Trust to denote a conservation easement, and shall indicate that the area is a permanently preserved area and no mowing or clearing is allowed.
34. The bridge of Shakes Run Creek shall be constructed prior to issuance of any building permits for lots on the south side of the creek.