

Planning Commission

Staff Report

February 7, 2019



Case No:	18SUBDIV1024
Project Name:	S English Station Property
Location:	1200 S English Station
Owner(s):	Barbara Sorrell
Applicant:	Perfection Builders
Jurisdiction:	Louisville Metro
Council District:	20 – Stuart Benson
Case Manager:	Jay Lockett, AICP, Planner I

REQUEST(S)

- **Variance** to allow lots to meet the setbacks for the Alternative Development Incentive regulations found in Land Development Code section 5.3.1.D.1.a rather than the form district standards
- **Waiver** of Land Development Code section 5.8.1.B to not provide sidewalks in the S English Station right-of-way adjacent to lots 9-12 and a portion of lot 136 as indicated on the preliminary plan
- **Major Preliminary Subdivision Plan (Development Potential Transfer)** with review of land disturbing activity on slopes greater than 20%

CASE SUMMARY/BACKGROUND

A major preliminary subdivision plan utilizing development potential transfer for steep slopes is proposed on 49.09 acres of land located adjacent to Interstate 64 on S English Station Rd. The proposal includes 134 buildable lots and 2 open space lots. The majority of the development would be clustered along the western and southern parts of the site, in order to avoid disturbing the majority of the steepest slopes on the subject site. The applicant is requesting a variance in order to utilize the Alternative Development Incentive to allow 15 foot minimum front setbacks, and 0 foot side yard setbacks rather than the standard 25 foot front and 5 foot sides. The waiver is requested for the section of sidewalk that would extend south from the bridge over I-64 approximately 320 feet.

STAFF FINDING

The requests are adequately justified and meet the standards of review. The areas of disturbance with slopes greater than 20% for the proposed subdivision are minimized in accordance with the comprehensive plan.

TECHNICAL REVIEW

The application of development potential transfer on this project allows for the following:

- Lot sizes to be reduced in accordance with the alternative development incentives of the Neighborhood form district.
- Setbacks to be applied as required for standard subdivision development in the R-4 zoning district.

- The transferrable potential is based on the theoretical maximum allowable density of the zoning district containing the preserved slopes; therefore, the development potential of preserved areas is incorporated through reductions in lot sizes across the total area of the subdivision.
- Areas of steep slopes may be present within single-family lots subject to the requirements of Chapter 4, Part 7.5 – Land Disturbing Activity on Slopes Greater than 20%. Areas within lots may not be used for development potential transfer.
- All areas being considered for development transfer potential must be preserved as open space or by other acceptable means.

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

Portions of lots 11-24 lie within the 250 foot expressway noise buffer area. A sound study was conducted in accordance with Land Development Code section 5.1.7.E and found that sound levels on these lots would be in excess of 65 Decibels without appropriate mitigation. The study concluded that a 5 foot sound barrier installed along lots 12-24 would appropriately mitigate the highway sound to an acceptable level.

INTERESTED PARTY COMMENTS

The office of Metro Councilman Stuart Benson has expressed concerns about granting any sidewalk waiver for the site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare since homes in the subdivision will still maintain adequate yards and setbacks around structures. All provisions for safe circulation of traffic and access to utility infrastructure will be maintained.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since the mix of older and newer homes in the area have varied setbacks and a mixed rural and suburban character.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since all appropriate access and utilities will be provided within the subdivision.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations, as the setbacks allowed by the request will encourage flexibility of housing design.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances, but is rather a design choice.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship, as the subdivision could still be generally developed as proposed with standard setbacks.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions taken subsequent to the adoption of the zoning regulations.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

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

STAFF: The waiver will not adversely affect adjacent property owners, as the development will still include sidewalks for the majority of its frontage along S English Station Rd. There are currently no sidewalks available in this area.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The area of the requested waiver is directly south of a narrow bridge that crosses I-64, and also contains an existing drainage swale and guardrail. The sidewalk would likely not be able to connect across the bridge unless it was significantly reconstructed. The proposed waiver would have the sidewalk stop across from Oxford Station Ln.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver is the minimum necessary to afford relief to the applicant, as sidewalks would be provided along all other existing and proposed rights-of-way as required by the Land Development Code.

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

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

STAFF: A preliminary soil and slope evaluation was performed and no significant concerns with respect to slope instability or substantial erosion were observed on these scattered lots. There are some lots throughout the development that would have portions of slopes greater than 20%, however the preliminary soil and slope evaluation did not find that a full geotechnical report be completed at this time. Lots 68, 90-92 and 103-106 show some areas of slopes greater than 30% and the preliminary plan shows limits of disturbance to avoid disturbing the majority of the steepest areas. There are several karst features identified on the preliminary plan. A geotechnical engineer will evaluate and determine appropriate methods for filling any sinkholes. Overall, the design and layout appears to be the minimum necessary accommodate the proposed use of the site.

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

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

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

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

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

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

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

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

STAFF: Guideline 4, Policy 5 of Cornerstone 2020 calls for the integration of natural features into the pattern of development. Guideline 5, Policy 1 provides that proposals should respect the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems. In general, preliminary soil and slope evaluation demonstrates that the proposal is in conformance with the aforementioned policies of the Comprehensive Plan as construction methods have been provided to minimize property damage and environmental degradation related to disturbance of steep slopes. While some buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan (Development Potential Transfer)** with review of land disturbing activity on slopes greater than 20%

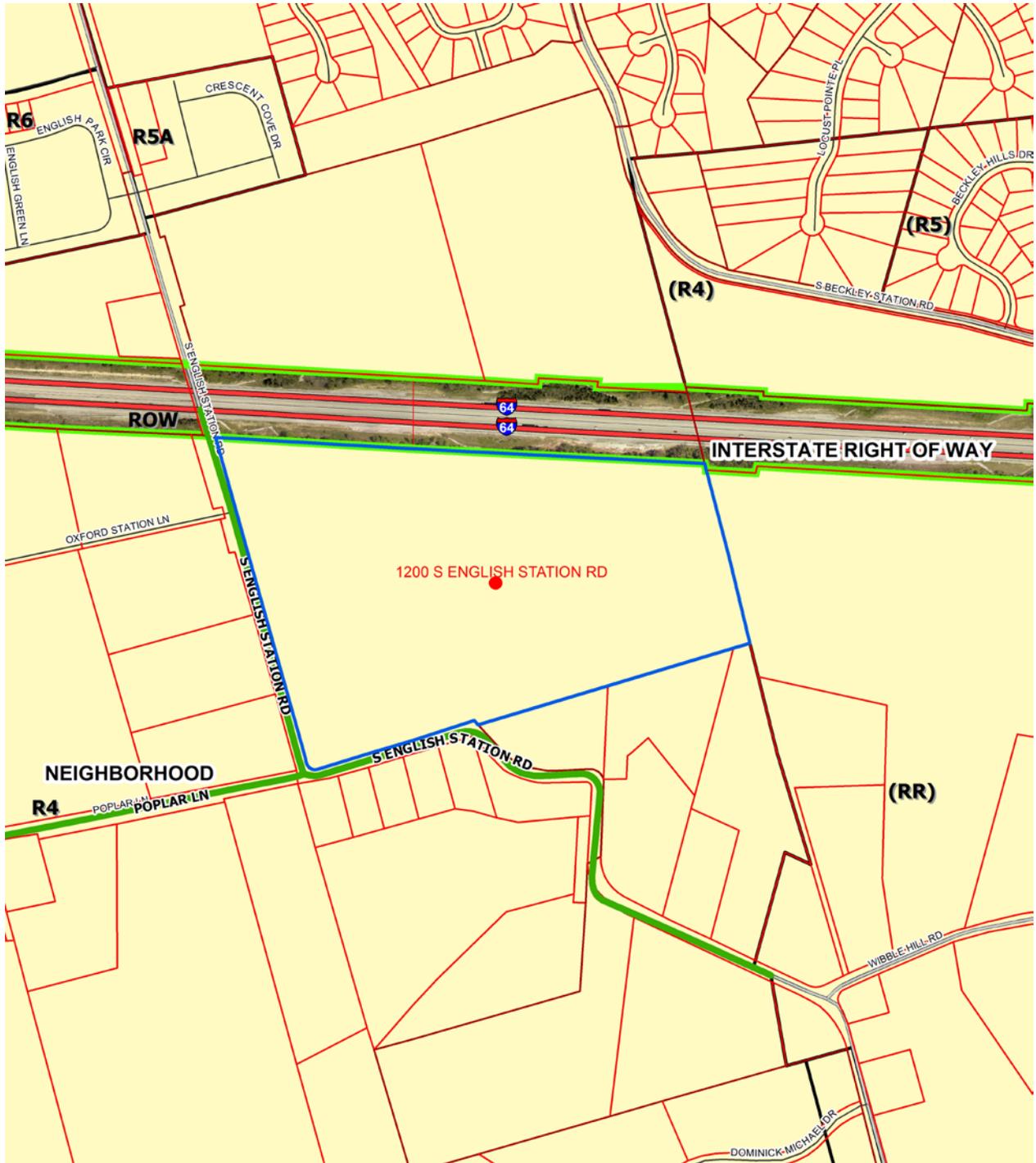
NOTIFICATION

Date	Purpose of Notice	Recipients
1-23-19	Hearing before Planning Commission	1 st tier adjoining property owners Attendants of Neighborhood Meeting Registered Neighborhood Groups in Council District 20

ATTACHMENTS

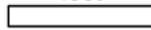
1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map



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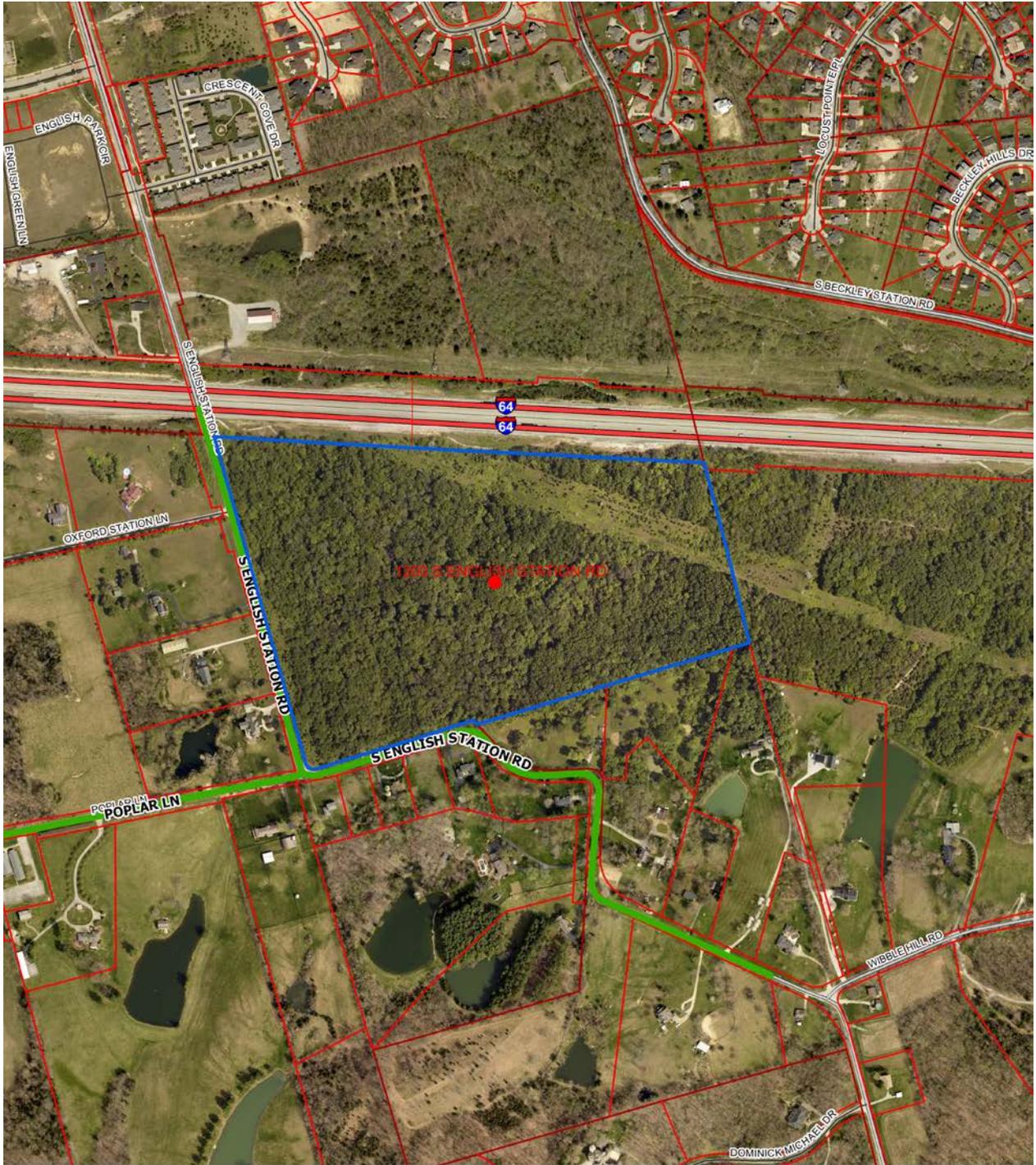
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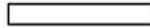
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2. Aerial Photograph



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feet



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3. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. 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."
3. Open space 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.
4. 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.
5. 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. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
6. 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.
7. 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.
8. 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.

9. 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.
10. Prior to requesting a Certificate of Occupancy for any homes on lots 11-24, the developer will construct the 5' noise barrier as described in the Kim Noise Impact Study dated January 2019 where depicted in Figure 1 of that study.