

PLANNING COMMISSION MINUTES
February 4, 2021

OLD BUSINESS

20-ZONE-0086

Request: Change in Zoning from R-4 to PRD with Detailed District Development Plan, Binding Elements, Major Preliminary Subdivision and Waivers

Project Name: Tucker Station Road Subdivision

Location: 3311 Tucker Station Road

Owner: Lori & Christopher Jones

Applicant: Tucker Station Development

Representative: Bardenwerper, Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 20 – Stuart Benson

Case Manager: Dante St. Germain, 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.)

NOTE: COMMISSIONERS BROWN, DANIELS AND SEITZ RECUSED

Agency Testimony:

00:53:18 This case was continued from the January 21, 2021 Planning Commission meeting.

Dante St. Germain presented a landscape exhibit that was provided by the applicant (see recording for details). The exhibit shows what the buffer between Tucker Station Road and the proposed rears of houses would look like.

Sherie Long provided a more detailed overview of the landscape exhibit provided by the applicant. The exhibit has a mixture of small and large trees, both deciduous and evergreen, as well as some shrubs and ornamental grasses to provide year-round buffering.

Dante St. Germain presented a rear façade exhibit showing what the rear of the units would look like from Tucker Station Road. These facades would be behind the landscaping shown in the landscape exhibit.

The following spoke in favor of this request:

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John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40222
Doug Schultz, Sabak, Wilson and Lingo, 608 South 3rd Street, Louisville, Ky. 40202

Summary of testimony of those in favor:

John Talbott spoke on behalf of the applicant. Mr. Talbott showed some slides from his PowerPoint presentation (see recording for detail and presentation). The applicant agrees to have a binding element that there will be no playground equipment or sheds in the rears that back up to Tucker Station. The applicant also previously agreed to irrigate the berm and to have the fence. In regards to the contiguous homes, Mr. Talbott believes this waiver is frequently granted and that the design of the homes is such that it does not look out of character with the area. The development is close to proposed Urton Lane and the Tyler Center so this density is appropriate.

Responding to a question from Commissioner Carlson, Doug Schultz, said the sidewalk at lot 24 will be 3-4 feet off the property line.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299

Summary of testimony of those in opposition:

Steve Porter spoke in opposition to the request. Most of the issues his clients had have been taken care of by the applicant. The only remaining objective is that the development is not a conservation subdivision, and there isn't enough open space in the proposed development to meet that standard.

Rebuttal

John Talbott spoke in rebuttal. The neighborhood plan does not require conservation neighborhood plans, it encourages them. This development has an adequate amount of open space for the size of the development and its location.

Deliberation

01:40:09 Planning Commission deliberation.

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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 PRD

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

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed zoning district would not permit higher density or intensity uses; the proposed zoning district would allow uses that are of substantially similar scale and intensity to the existing uses near the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal would permit new development providing residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, most tree canopy on the site consisted of invasive species which have been removed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is located near an existing activity center. The proposal would not permit higher density and intensity uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is via Tucker Station Road, a primary collector at this location; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, Transportation Planning has approved the proposal; no direct residential access to high speed roadways is proposed; 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 relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, the majority of the tree canopy on the site consisted of invasive species. The proposal will include replacement tree canopy which is not invasive; no karst topography is evident on the site; the site not located in the regulatory floodplain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would increase the variety of housing available in the neighborhood; the proposal would support aging in place by increasing the options for older adults and people with disabilities to live in the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would permit inter-generational, mixed-income development that is connected to the neighborhood and surrounding area; the site is not located on or near a transit corridor, but is located near an existing activity center providing neighborhood goods and services; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would encourage the provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. It would expand opportunities for people to live in quality, variably priced housing in locations of their choice; no existing residents will be displaced by the proposal; The proposal would permit innovative methods of 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 PRD, Planned Residential Development on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Clare, Howard, Mims, Peterson, Sistrunk and Lewis

RECUSED: Commissioners Brown, Daniels and Seitz

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Waivers

#1 – Waiver from 5.3.1.D.1.b.vi to allow more than 4 contiguous units in a PRD (20-WAIVER- 0100)

WHEREAS, the waiver will not adversely affect adjacent property owners as the extra contiguous units will be internal to the site and will generally not be visible to neighbors; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address the number of contiguous units in attached housing. Plan 2040 encourages a variety of housing options be provided in Louisville Metro, including both attached and detached housing units; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as having only four contiguous units would, in some places on the site, result in a single detached unit or two attached units, a less advantageous configuration than 5 or 6 attached units; and

#2 – Waiver from 7.3.30.E to allow a drainage easement to overlap a rear yard by more than 15% (20-WAIVER-0113)

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

WHEREAS, the waiver will not adversely affect adjacent property owners as the overlap between the rear yard and the drainage easement is not likely to be visible outside the property or increase drainage off the property; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address overlap between required yards and drainage easements; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the overlap is made necessary by MSD generally requiring drainage easements to be in rear yards; and

WHEREAS, the Louisville Metro Planning Commission further finds strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by requiring excess rear

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yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #1 from 5.3.1.D.1.b.vi to allow more than 4 contiguous units in a PRD (20-WAIVER- 0100) and Waiver #2 from 7.3.30.E to allow a drainage easement to overlap a rear yard by more than 15% (20-WAIVER-0113).

The vote was as follows:

YES: Commissioners Carlson, Clare, Howard, Mims, Peterson, Sistrunk and Lewis

RECUSED: Commissioners Brown, Daniels and Seitz

Detailed District Development Plan/Major Preliminary Subdivision (20-MSUB-0008) with Binding Elements

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution was adopted.

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 has approved the preliminary development plan; and

WHEREAS, open space is being provided in compliance with the requirements of 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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan/Major Preliminary Subdivision (20-MSUB-0008), **SUBJECT** to the following Binding Elements:

1. The development 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.

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2. 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.
3. 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.
4. 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 trees and fences within buffer areas 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.
5. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
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. A note shall be placed on the preliminary plan, construction plan(s) and the record plat that states, "Construction fencing shall be erected to protect trees on site and 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

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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 areas.”

8. 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.
9. 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.
10. 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.
11. 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.

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12. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
13. 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.
14. The applicant shall install signs, each to be located within the public right-of-way of Street B, one at the northern terminus of Street B, and one at the eastern terminus of Street B. These signs shall indicate that Street B shall, in the future, extend beyond the subject property and connect to roadways on adjacent properties. Such signage and location are subject to the prior approval by the Louisville Metro Public Works Department and shall be installed prior to release of bonds for the installation of the street infrastructure.
15. 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.
16. 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.
17. PRD Transfer of Infrastructure Binding Element Covenants, Conditions, and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs, as well as the inclusion of the following requirements:
 - (a) all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities shall be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA");
 - (b) any shared water meters and property service connections for sanitary sewers shall be the sole responsibility of the HOA;

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- (c) any water, sewer and drainage facilities that cross lot lines shall be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and
- (d) where attached residences are proposed, easements shall be provided to provide for incidental encroachments, property maintenance and repair.
18. The rear facades of the building constructed on lots 24-27 shall be substantially similar to the elevations shown at the February 4, 2021 Planning Commission hearing.
19. The developer shall submit a landscape plan which reflects, at a minimum, the landscaping depicted in the landscape exhibit shown at the February 4, 2021 Planning Commission hearing. The landscape plan shall be in compliance with Chapter 10 of the Land Development Code.
20. Lighting shall comply with the following restrictions:
- a) All exterior lighting, whether freestanding or attached to any structure, including street lights and lighting for any signage, shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground. The following are exceptions to this requirement:
 - i) A partly shielded or unshielded decorative wall sconce(s) shall be allowed at a front entry to a residence if the total output in lumens does not exceed 2000 lumens,
 - ii) Open flame gas lamps,
 - iii) Lighting installed with a vacancy sensor, where the sensor extinguishes the lights no more than 15 minutes after the area is vacated,
 - iv) Low voltage landscape lighting aimed away from adjacent properties and not exceeding 2000 lumens in output
 - b) No LED or metal halide lighting shall have a correlated color temperature (CCT) exceeding 3000 degrees Kelvin.
 - c) These lighting restrictions shall also be included in the subdivision Covenants, Conditions and Restrictions (CCR's) which are recorded and shall be provided to every purchaser of property in the subdivision.

The vote was as follows:

YES: Commissioners Carlson, Clare, Howard, Mims, Peterson, Sistrunk and Lewis

RECUSED: Commissioners Brown, Daniels and Seitz