

Planning Commission Staff Report

June 3, 2021



Case No:	20-ZONE-0117
Project Name:	9418 Pirouette Avenue
Location:	9418 Pirouette Avenue
Owner(s):	Corcoran Home Building and Remodeling
Applicant:	Corcoran Home Building and Remodeling
Representative(s):	Bardenwerper, Talbott, & Roberts, PLLC
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from PRD, Planned Residential Development to R-6, Multi-family Residential
- **Revised Detailed District Development Plan**

CASE SUMMARY

This case was continued from the May 10, 2021 Evening Public Hearing of the Planning Commission. A revised plan was presented to the Land Development & Transportation Committee (LD&T) on the 27th of May. Proposed revisions included a 30' wide private access easement connecting Pirouette Avenue with the adjoining 1.7 acre vacant, residentially zoned lot. This connection conforms with Land Development Code, section 5.9.2.A.1.a.ii and eliminates the applicant's requested waiver to not provide a public or private street connection.

The property was rezoned in 2019 from R-4 to PRD, case 19ZONE1028. The approved plan allowed for 51 attached, residential dwellings. The revised plan includes 128 dwellings across 8, 2-story structures. This is a reduction from the plan presented at the May 10, 2021 Public Hearing that proposed 136 units, including 1, 3-story structure.

The site is located northeast of New Cut Road along Pirouette Ave. Access to Interstate-265 is provided from New Cut Road. The development site abuts single-family residential districts, except a small portion that shares a boundary with a CM, commercial-manufacturing district in the north corner of the property. The Fairdale village center is within proximity, and to the southeast of the subject property.

STAFF FINDING

The proposed change in zoning conforms with the Land Use and Development Policies of Plan 2040 and the Fairdale Neighborhood Plan. The revised detailed district development plan has also been adequately justified based on staff's analysis contained in the standard of review. The current PRD zoning district supports and provides a variety of housing types and styles. The proposed district adds to these options through the inclusion of multi-family residential at an appropriate location and expands opportunities for all people to live in quality, variably priced housing in locations of their choice.

TECHNICAL REVIEW

- Preliminary plan approval from Louisville MSD and Transportation Planning has been received on plan revisions, June 7, 2021
- No additional waivers or variances resulted from proposed revisions to the plan and it appears to conform to the minimum requirements of the Land Development Code.

STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; **OR**
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; **OR**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is in the Village Form District

Village Form is characterized by predominately residential uses where the pattern of development is distinguished by open space such as parks, greenways, and farmland protected by conservation easements. The Village Form should have a small-scale village center with a mixture of uses such as offices, shops, restaurants, services and a diversity of housing types that may be higher in density than the rest of the district. The village center may be arranged around a village green. Low-density residential uses interspersed with open space may be encouraged at the edge of the Village. Village Form should be designed to encourage pedestrian, bicycle and transit use.

The proposed district is located near employment centers, Jefferson Memorial Forest, I-265, and TARC route #6 connecting to Downtown (although trips are limited at the nearest stop to the subject site), as well as the village center of Fairdale. The site is located where demand and adequate infrastructure exists or is planned, and in an area to support transit-oriented development and an efficient public transportation system. Vehicular access to the site will cross through a small segment of lower intensity zones before reaching the subject site. However, this would not appear to create a significant nuisance based on the limited travel required on local roads. The proposal will provision all necessary improvements to facilitate accessibility by bike, car, foot, or transit. A sidewalk gap at New Cut Road and Pirouette Avenue will be closed by the developer prior to occupancy of the subject property.

All required landscape buffers and setbacks will be provided to offer an appropriate transition between the proposed district and lower intensity residential properties abutting the site. Minimum requirements for tree canopy will be provided, including preservation of 20% of the existing canopy. Areas of the subject site that contain local or FEMA floodplain are in the north corner of the site where detention will

be located to minimize disturbance. MSD has reviewed and approved the proposed development to ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality.

The current PRD zoning district supports a variety of housing types, including attached, zero-lot, and clustering; mixed-income development; fair and affordable housing; and provides relief from the ordinary standards of residential site design. The proposed district expands opportunities for multi-family, accessory apartments and a mixing of housing styles that reflect the pattern of the form district. It expands upon available opportunities to build fair and affordable housing and expand opportunities for people to live in quality, variably priced housing in locations of their choice. A wider range of income levels could be accommodated for when the zoning district provides greater flexibility for multi-family and mixed housing than is currently available in the PRD district.

The site is in the area of the Fairdale Neighborhood Plan

Applicable recommendations are below:

- Support Modification of Zoning Classifications that will Encourage Development of Affordable and Condominium Style Housing Surrounding Village Center to Enable Senior Citizens to Remain in the Fairdale Community
- Identify Need and Demand for Affordable and Senior Housing in Fairdale to Replace Aging Units such as Barracks Style Apartments and Mobile Home Developments

Each of these recommendations is expanded upon within the proposed zoning district. Neither the PRD or proposed zoning district limit development to a specific age range and both allow housing opportunities for Louisville Metro's aging population at an appropriate location where individuals can choose to remain in their communities. The proposed R-6 district allows for opportunities to replace housing provided in older apartments or mobile home parks.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DETAILED DISTRICT DEVELOPMENT PLAN

- 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: 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 provided. All required landscape buffers and setbacks will be provided to offer an appropriate transition between the proposed district and lower intensity residential properties abutting the site. Minimum requirements for tree canopy will be provided, including preservation of 20% of the existing canopy. Areas of the subject site that contain local or FEMA floodplain are in the north corner of the site where detention will be located to minimize disturbance.

- 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 and the community will be provided. Connectivity in compliance with the Land Development Code has been demonstrated on the revised development plan.

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

STAFF: The proposal meets or exceeds the minimum requirements for open space, tree canopy, and landscaping.

- 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: Metropolitan Sewer District approval will be required to will ensure the provisioning 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 proposal is compatible with the overall site design, land uses, and future development of the area as the site is located within proximity to the Fairdale Village Center, similar densities of development, and all necessary improvements to facilitate accessibility by bike, car, foot, or transit. A sidewalk gap at New Cut Road and Pirouette Avenue will be closed by the developer prior to occupancy of the subject property.

- 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 proposed development plan conforms to the Comprehensive Plan and the Land Development Code.

REQUIRED ACTIONS

- **RECOMMEND** to the Louisville Metro Council that the change in zoning from R PRD, Planned Residential Development to R-6, Multi-family Residential on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** subject to proposed binding elements

NOTIFICATION

Date	Purpose of Notice	Recipients
3/10/21	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 13
4/22/21 4/26/21*	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 13
4/9/21	Hearing before PC	Sign Posting on property
4/28/21	Hearing before PC	Legal Advertisement in the Courier-Journal

*Notice corrected to include call-in number and event number sent by PDS case manager

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. **Zoning Map**



2. Aerial Photograph



3. Plan 2040 Staff Analysis

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Village: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Land Use & Development Goal 1: Community Form	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposed district is located near employment centers, Jefferson Memorial Forest, I-265, and TARC route #6 connecting to Downtown (although trips are limited at the nearest stop to the subject site), as well as the village center of Fairdale where demand and adequate infrastructure exists or is planned.
2	Land Use & Development Goal 1: Community Form	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	✓	All required landscape buffers and setbacks will be provided as required to provide an appropriate transition between the proposed district and lower intensity residential properties.
3	Land Use & Development Goal 2: Community Form	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	A vacant lot is proposed for development.
4	Land Use & Development Goal 3: Community Form	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	Jurisdictional wetlands are present at the entrance to the site. ACOE approval will be required prior to construction plan approval to minimize the potential for property damage or environmental degradation.
5	Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	Minimum requirements for tree canopy will be provided, including preservation of 20% of the existing canopy.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Land Use & Development Goal 4: Community Form	3. Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.	✓	The site does not contain any apparent historic or cultural resources.
7	Land Use & Development Goal 1: Mobility	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposed district is located near employment centers, Jefferson Memorial Forest, I-265, and TARC route #6 connecting to Downtown (although trips are limited at the nearest stop to the subject site), as well as the village center of Fairdale to support transit-oriented development and an efficient public transportation system.
8	Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Vehicular access to the site will cross through a small segment of lower intensity zones before reaching the subject site. This would not appear to create a significant nuisance based on the limited travel required on local roads.
9	Land Use & Development Goal 3: Mobility	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The proposal will provision all necessary improvements to facilitate accessibility by bike, car, foot, or transit. Except for a short sidewalk gap at New Cut Road and Pirouette Avenue, the existing public network supports a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities.
10	Land Use & Development Goal 3: Mobility	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	All improvements to the transportation network required of the development will be provided.
11	Land Use & Development Goal 3: Mobility	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Development of the site will bear or share in rough proportionality the costs of transportation facilities and services made necessary by development. Connectivity to provide appropriate access within, and through, the district will be provided.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Land Use & Development Goal 3: Mobility	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	A sidewalk gap at New Cut Road and Pirouette Avenue will be closed by the developer prior to occupancy of the subject property.
13	Land Use & Development Goal 3: Mobility	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	There do not appear to be any long-range plans which impact the development proposal.
14	Land Use & Development Goal 3: Mobility	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No direct residential access to high speed roadways will be provided.
15	Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The proposal is in an area served by existing utilities or planned for utilities.
16	Land Use & Development Goal 2: Community Facilities	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	The proposal would appear to have access to an adequate supply of potable water and water for fire-fighting purposes.
17	Land Use & Development Goal 2: Community Facilities	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has reviewed and approved the proposed development to ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality.
18	Land Use & Development Goal 1: Livability	5. Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	✓	Minimum requirements for tree canopy will be provided, including preservation of 20% of the existing canopy.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
19	Land Use & Development Goal 1: Livability	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	The subject property is not located within a karst prone area per LOJIC and no further karst investigation was required of the applicant.
20	Land Use & Development Goal 1: Livability	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	Areas of the subject site that contain local or FEMA floodplain are in the north corner of the site where detention will be located to minimize disturbance.
21	Land Use & Development Goal 1: Housing	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The current zoning district supports a variety of housing types, including attached, zero-lot, and clustering. The proposed district expands opportunities for multi-family, accessory apartments and a mixing of housing styles that reflect the pattern of the form district.
22	Land Use & Development Goal 1: Housing	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The current PRD district supports housing options that support aging in place. The proposal expands upon available types and styles for provisioning housing for aging adults near shopping and transit routes.
23	Land Use & Development Goal 2: Housing	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The existing PRD districts supports mixed-income development. The proposal expands upon the ability to provision a wider range of housing for differing income levels.
24	Land Use & Development Goal 2: Housing	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The subject site is within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as being within proximity to amenities providing neighborhood goods and services. The proposed district is located near employment centers, Jefferson Memorial Forest, I-265, and TARC route #6 connecting to Downtown (although trips are limited at the nearest stop to the subject site), as well as the village center of Fairdale.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
25	Land Use & Development Goal 3: Housing	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The proposed district expands upon available opportunities to build fair and affordable housing and expand opportunities for people to live in quality, variably priced housing in locations of their choice. A wider range of income levels could be accommodated for when the zoning district provides greater flexibility for multi-family, two-family, attached, clustering, and co-housing then is currently available in the PRD district.
26	Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The proposed district is located on an infill lot within an existing residential area. The proposed residential use will allow for an increase in the residential population in this neighborhood resulting in no displacement.
27	Land Use & Development Goal 3: Housing	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The existing PRD district provides flexibility from the traditional standards of single-family residential site design, but it is limited in its ability to include multi-family, accessory apartments, and/or co-housing. The proposed district encourages a wider range of flexibility in design options.

4. Existing Binding Elements (19zone1028)

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 require a public hearing by the Planning Commission with final approval by the Louisville Metro Council; any changes/additions/alterations not so approved shall not be valid.~~
2. ~~No outdoor advertising signs, small freestanding 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. ~~Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. ~~The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review 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 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~
 - c. ~~A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits, except that grading/clearing and foundation only permits may be issued to ensure the accuracy of property lines as they relate to common side walls for residential units.~~
 - d. ~~The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the September 19, 2019 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.~~~~
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.~~
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. ~~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; (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.~~
8. ~~No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.~~
9. ~~Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity, unless approved by the Louisville Metro Planning Commission. A note to this effect shall be placed on the record plat.~~
10. ~~An 8-foot privacy-style fence shall be provided and maintained in good condition along the rear of lots 1-10 and lots 16-24.~~
11. ~~Any substantial change in the development plan i.e. density, elevation of units, or change in use shall require approval of the Louisville Metro Council after a public hearing by the Planning Commission~~

5. **Proposed 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 require a public hearing by the Planning Commission with final approval by the Louisville Metro Council; any changes/additions/alterations not so approved shall not be valid.
2. No outdoor advertising signs, small freestanding 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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review 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 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 3, 2021 Planning Commission public hearing. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
 - e. A minor subdivision plat or legal instrument in a form acceptable to the Planning Commission legal counsel shall be recorded to create the 30' Public Access Way as shown on the development plan. A copy of the recorded instrument shall be submitted to the Planning and Design Services.
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.
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. Open space to comply with LDC Chapter 5, Part 11 shall remain as open space in perpetuity, unless approved by the Louisville Metro Planning Commission.
8. An 8-foot privacy-style fence shall be provided and maintained in good condition at all property lines abutting existing residences.
9. Any substantial change in the development plan i.e. density, elevation of units, or change in use shall require approval of the Louisville Metro Council after a public hearing by the Planning Commission.
10. Prior to the issuance of a Certificate of Occupancy, construction plans for a roughly 60' gap in the public sidewalk at New Cut Road and Pirouette Avenue shall be reviewed and approved by Louisville Metro Department of Public Works and Transportation Planning, and the sidewalk shall be installed.
11. Prior to developer requesting a Certificate of Occupancy ("CO") on the first apartment building, developer shall request Metro Public Works ("Public Works") to inspect the road infrastructure within the 30' Public Access Easement leading from Pirouette Avenue to the stub connection to the north property line to determine what amount of bond, if any, the developer shall be required to post prior to CO issuance. The access roadway to the stub connection at the north property line shall be built to the terminus at the north property line prior to release of said bond, if applicable the developer can request a bond release and Public Works to inspect the road infrastructure for the access roadway for same whenever the road infrastructure construction is complete.
12. The 30' Public Access Easement access roadway connection to the north property line shall remain open and available to thru traffic