

**MINUTES OF THE MEETING
OF THE
PLANNING COMMISSION
March 2, 2023**

A meeting of the Louisville Metro Planning Commission was held on Thursday, March 2, 2023 at the Old Jail building court room, located at 514 West Liberty Street, Louisville KY 40202.

Commissioners Present:

Marilyn Lewis, Chair
Te'Andre Sistrunk
Michelle Pennix
Suzanne Cheek (left at approximately 3:17 p.m.)
Rich Carlson
Jim Mims
Lula Howard
Bill Fischer
Patti Clare

Commissioners Absent:

Jeff Brown

Staff Members Present:

Brian Davis, Assistant Director
Julia Williams, Planning and Design Manager
Chris French, Planning and Design Supervisor
Laura Ferguson, Assistant County Attorney
Chris Cestaro, Management Assistant
Dante St. Germain, Planner II
Jay Lockett, Planner II
Molly Clark, Planner II
Chris Cestaro, Management Assistant

Others Present

Beth Stuber, Engineer Supervisor
Mark Sites, MSD
Brad Selch, MSD

The following matters were considered:

PLANNING COMMISSION

March 2, 2023

APPROVAL OF MINUTES

FEBRUARY 16, 2023 PLANNING COMMISSION MEETING MINUTES

00:04:40 On a motion by Commissioner Carlson, seconded by Commissioner
, the following resolution was adopted:

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting on February 16, 2023.

The vote was as follows:

YES: Commissioners Pennix, Cheek, Carlson, Sistrunk, and Lewis.

ABSENT: Commissioner Brown.

ABSTAIN: Commissioners Mims, Howard, Fischer, and Clare.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

Request: Change in Zoning from R-4 to R-6, with Detailed District Development Plan with Binding Elements
Project Name: Mud Lane Apartments
Location: 3902 Mud Lane
Owner: Hubert L. Hester Living Trust
Applicant: Hubert L. Hester Living Trust
Representative: Wyatt, Tarrant and Combs
Jurisdiction: Louisville Metro
Council District: 13 - Dan Seum, Jr.
Case Manager: Jay Luckett, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:05:32 Jay Luckett presented the case and showed a Power Point presentation (see recording for detailed presentation.)

00:08:30 Mr Luckett read a proposed binding element into the record, as follows:

If permitted by KYTC, the developer, applicant, or property owner shall install or fund the installation of all will stop signs at the intersection of Mud Lane and Blue Lick Road, including the installation of stop signs [unintelligible] roadways if necessary.

00:09:56 In response to a question from Commissioner Cheek, Beth Stuber, Metro Traffic Engineer, said that Metro cannot stop traffic on Blue Lick Road without KYTC's permission, due to jurisdictional issues. Mr. Luckett said that a right-turn-only lane may be possible but ROW issues may prohibit this (see recording for detailed discussion.)

00:11:23 Commissioner Mims and Ms. Stuber discussed KYTC and other transportation issues (see recording.)

00:12:51 Commissioner Carlson, Ms. Stuber, and Mr. Luckett discussed the turn lane potential and ROW issues at Mud Lane & Blue Lick Road.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

The following spoke in support of the request:

Jon Baker, Wyatt Tarrant & Combs, 400 West Market Street Suite 2000, Louisville, KY 40202

Derek Triplett, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Curt Greenwell, 1545 Hibbs Lane, Coxs Creek, KY 40013

Summary of testimony of those in support:

00:15:37 Jon Baker, the applicant's representative, presented the applicant's case and showed a Power Point presentation (See recording for detailed presentation.)

00:21:03 Derek Triplett, an applicant's representative, presented details about the proposed site plan (see recording for detailed presentation.)

00:25:42 Mr. Baker presented the Traffic Impact Study Report and additional traffic pattern information.

00:32:43 Curt Greenwell said he was present to answer any questions.

00:33:03 In response to questions from Commissioner Mims, Ms. Stuber discussed the timeline for the KYTC Mud Lane project (still in the development stage; no timeline.) Mr. Triplett said the treed area shown on the plan is a variable MSD easement. Mr. Triplett also discussed whether the Hesters own the property on the north side of the Mud Lane/Blue Lick Road intersection (they do not; see recording for detailed discussions.)

00:36:19 In response to questions from Commissioner Carlson, Mr. Triplett discussed methods of tree preservation during construction (fencing, etc.) See recording for detailed discussion.

00:38:07 In response to questions from Commissioner Clare, Mr. Baker discussed pedestrian access, and other multi-family developments in the area.

00:39:14 In response to questions from Commissioner Howard, Mr. Greenwell discussed the properties of fiberboard (used on the exterior of the proposed structures.)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

00:39:56 In response to questions from Commissioner Sistrunk, Mr. Greenwell said there will be a mix of materials and colors on the buildings.

The following spoke in opposition to the request:

No one spoke.

Rebuttal:

00:41:21 Mr. Baker followed up with Commissioner Sistrunk regarding the buildings' exterior designs. He also discussed other multi-family developments in the area.

00:43:07 In response to questions from Commissioner Howard, Mr. Baker said there is no TARC service to this area of Mud Lane. Mr. Luckett confirmed that development plans are sent to TARC for review.

00:44:32 In response to questions from Commissioner Mims, Mr. Luckett said there is currently no back entrance into Commerce Crossing from Mud Lane, although that might be possible in the future.

Deliberations:

00:45:07 Commissioners' deliberation.

00:54:00 Commissioner Carlson and Mr. Luckett discussed the proposed binding element #7 regarding stop signs, or possibly a turning lane (see recording for detailed discussion.) Commissioner Howard noted that, if KYTC finds some issue with the development proposal, KYTC will make decisions about Mud Lane, not the Planning Commission.

00:57:30 Commissioner Mims and Mr. Luckett discussed binding elements regarding stop signs; if a right-turn lane is necessary, the developers need to contribute a dollar amount; and a binding element related to three/four different patterns of color on the buildings. Laura Ferguson, legal counsel for the Planning Commission, said that building design could be addressed by adding some language to existing proposed binding element #3 D (in italics, below) to state:

3D. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall use at least three color variations for the buildings, and shall be substantially similar to those presented at the March 2, 2023 Planning Commission public hearing. A copy of the approved rendering

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

00:59:25 Mr. Luckett and Ms. Stuber discussed the stop sign issue. Ms. Stuber said that, according to the traffic study, the percentage of traffic through the Mud Lane / Blue Lick Road intersection is “pretty slim”. Commissioner Clare suggested altering the binding element to state that the applicant could contribute a dollar amount towards “intersection alterations”, rather than specifying stop signs, etc. See recording for detailed discussion.

01:02:27 Discussion regarding binding element #7.

01:03:21 The Commission came out of Business Session to allow Mr. Baker to confirm **on the record** that the applicant is willing to agree to revised binding element #7. Mr. Baker said yes. Binding element #7 was revised to read as follows:

Unless the Kentucky Transportation Cabinet allows for the applicant/developer to install an all-way-stop condition at the intersection of Mud Lane and Blue Lick Road, the applicant/developer and/or the property owner shall provide Louisville Metro Public Works with a financial contribution for the necessary upgrade/improvements to the intersection. The developer shall make a contribution not to exceed \$15,000 towards the overall cost of the necessary intersection improvements which is consistent with the traffic growth associated with the Mud Lane Apartments, and the proportional impact of the traffic generated by the Apartments will have on the intersection as identified by the Traffic Impact Study Report for 3902 Mud Lane Apartments prepared by Adam Kirk Engineering on October 7, 2022 and revised on January 9, 2023. Developer shall provide said contribution within 60 days from when Metro Public Works requests it. The obligation to pay the contribution shall sunset 10 years from the date of Metro Council’s final action on the zoning application.

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.

Change-in-Zoning from R-4, Single-family Residential to R-6 Multi-family residential

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

01:09:56 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the subject site is approximately 2000 feet from Blue Lick Rd, and about 1 mile from commercial development at Preston Highway. The Commerce Crossings development lies within a mile of the site and contains a wide variety of employment opportunities; and adequate transitions in the form of buffering and screening will be provided adjacent to uses of a lower intensity. The applicant is proposing to preserve mature trees within buffer areas along the rear of the site; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the proposed zoning change would allow for additional housing options in the area; and

WHEREAS the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because the site has potential for wetlands and hydric soils. The applicant is minimizing disturbance of sensitive areas on the subject site by utilizing a single crossing point to the rear portions of the site; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the subject site does not have any distinctive cultural features. The applicant is proposing tree preservation within buffer areas along the rear of the site.; and the subject site does not contain any historic resources; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the subject site is not served by transit. The site is approximately 1 mile from suburban marketplace corridor and employment centers along Preston Highway; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because the site proposes private access directly from Mud Lane; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the proposed zoning district would allow for additional housing options within an area near employment opportunities and a commercial corridor; adequate roadways exist adjacent to and near the subject site.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

The applicant will provide sidewalks in the adjacent right-of-way; adequate transportation facilities exist to serve the site. The applicant will construct sidewalks in the adjacent right-of-way; the proposed zoning is compatible with existing and proposed transportation networks in the area; and the site proposes direct private access to Mud Ln. Right-of-way dedication may be required to accommodate the proposed development; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because utility services will be coordinated; water service will be coordinated with appropriate agencies; and MSD has approved the preliminary development plan; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because the applicant is proposing to preserve mature trees within the buffer areas along the rear of the site, as well as within the floodway areas along the front of the site; a karst survey has been performed with no karst features observed on site; and disturbance of sensitive areas is minimized in accordance with Comprehensive Plan goals and policies; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposed zoning would allow for a variety of housing types. The development and will fit within the residential development pattern of the district, which has a variety of residential zoning districts, densities and housing types; and the proposed zoning district will help promote aging in place by providing additional housing type options. The site is close to a variety of commercial uses; and

WHEREAS, the Commission further finds that proposal meets Land Use & Development Goal 2: Housing because the proposed zoning district would promote mixed income and intergenerational development by allowing for additional housing types in an area with access to a variety of commercial services, amenities and employment opportunities; and Mud Ln provides ready access to a transportation network that provides safe and convenient access to employment opportunities, services and amenities; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because the proposed zoning encourages the provision of fair and affordable housing by allowing for a variety of housing types, ownership options, lotting patterns and unit sizes; the proposed zoning district would not displace current residents; and the proposed zoning would allow for a variety of lotting patterns and unit types, allowing for production of fair and affordable housing; now, therefore be it

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change-in-Zoning from R-4, Single-family Residential to R-6 Multi-family residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Clare, Pennix, Mims, Cheek, Howard, Carlson, Fischer, Sistrunk, and Lewis.

ABSENT: Commissioner Brown.

District Development Plan with Binding Elements

01:10:54 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the subject site has some areas of wetlands and floodway on the subject site. The applicant is remediating the non-jurisdictional wetland areas, while limiting disturbance of the most sensitive portions of the subject site by utilizing a single crossing point to the rear of the site; and

WHEREAS, the Commission further finds that 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, the Commission further finds that all open space requirements of the Land Development Code are being met on the subject site; and

WHEREAS, the Commission further finds that 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

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate screening will be provided to screen adjacent properties and roadways; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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.
3. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 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. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall use at least three color variations for the buildings, and shall be substantially similar to those presented at the

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

March 2, 2023 Planning Commission public hearing. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

4. 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.
5. 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.
6. The applicant/developer/property owner shall provide all fire hydrants or other fire safety equipment as requested per the Okolona Fire Department. The final location shall be shown on the approved construction plans for the site.
7. Unless the Kentucky Transportation Cabinet allows for applicant/developer to install an all-way-stop condition at the Mud Lane-Blue Lick Road intersection (the "Intersection"), the applicant/developer and/or the property owner(s) shall provide Louisville Metro Public Works with a financial contribution for the necessary upgrade/improvement to the Intersection. The developer shall make a contribution not to exceed an amount of \$15,000.00 towards the necessary Intersection improvements, which stated contribution amount is consistent with the traffic growth associated with the Mud Lane Apartments and the proportional impact of the traffic generated by the Apartments will have on the Intersection, as identified by the Traffic Impact Study Report for 3902 Mud Lane Apartments prepared by Adam Kirk Engineering on October 7, 2022 and revised on January 9, 2023. Developer shall provide the contribution within sixty (60) days from when Louisville Metro Public Works requests it. The obligation to pay the contribution toward the improvements to the Mud Lane – Blue Lick Road intersection shall sunset ten (10) years from the date the Metro Council's takes its final action on the zone change request, under Case No. 22-ZONE-0079.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0079

The vote was as follows:

YES: Commissioners Clare, Pennix, Mims, Cheek, Howard, Carlson, Fischer, Sistrunk, and Lewis.

ABSENT: Commissioner Brown.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0105

Request: Change in Zoning from R-4 Single Family and C-1 Commercial to R-6 Multi-Family with a District Development Plan with Binding Elements and a Waiver

Project Name: Friess Old Bardstown

Location: 9408 and 9500 Old Bardstown Road

Owner: Roger Dale Perkins Estate; Michael and Laura Schnell

Applicant: Friess Property Company

Representative: Bardenwarper, Talbott and Roberts

Jurisdiction: Louisville Metro

Council District: 22 - Robin Engel

Case Manager: Jay Luckett, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:13:01 Jay Luckett presented the case, showed a Power Point presentation, and responded to questions from the Commissioners. Mr. Luckett noted that a labeling error on the left-turn-detail slide he showed has been corrected (see staff report and recording for detailed presentation.)

01:17:08 In response to a question from Commissioner Mims, Mr. Luckett said that staff has informed the applicant since the pre-application stage that connectivity to the west should be provided because it is required by the Land Development Code as well as being recommended by Comprehensive Plan Analysis.

The following spoke in support of the request:

Nick Pregliasco, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Ted Bernstein, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0105

Dan Friess, 7607 Ashton Park Circle, Louisville, KY 40228

Summary of testimony of those in support:

01:18:40 Nick Pregliasco, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

01:35:32 Dan Friess discussed his proposal and design (see recording for detailed presentation.)

01:39:17 In response to questions from Commissioner Cheek, Mr. Pregliasco showed the connection points to the approved single-family subdivision to the north. They also discussed the proposed dedicated right-turn lane on Thixton Lane (see recording for detailed discussion.)

01:43:11 In response to questions from Commissioner Mims, Mr. Pregliasco discussed the proposed off-site roadway improvements, as well as the Land Development Code requirements regarding stub streets.

The following spoke in opposition to the request:

No one spoke.

Rebuttal:

01:48:53 Mr. Pregliasco made closing statements.

01:50:03 Commissioner Fischer made comments regarding connectivity and the proposed 25-foot easement.

01:52:29 In response to questions from Commissioner Lewis, Mr. Luckett and Ms. Stuber discussed the 25-foot easement. Ms. Stuber said there had been no in-depth analysis, but it does not connect the people within the development to any other access.

Deliberations:

01:53:29 Commissioners' deliberation.

01:53:35 In response to questions from Commissioner Howard regarding binding element #3D, Mr. Luckett said that the date of today's Planning Commission public hearing would be added.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0105

01:54:46 In response to questions from Commissioner Sistrunk, Mr. Luckett said the applicant had not provided final elevations for the maintenance building. He said the standards for accessory structures within residential developments is that they have to be of the same materials as the main structures. Mr. Friess described what the building would look like. He agreed to having about four feet of brick, with siding the rest of the way up (see recording for detailed discussion.)

01:56:55 Commissioner Lewis and staff discussed a subdivision project across the highway from this site and whether connectivity was provided (see recording for detailed discussion.)

02:10:52 The Commission agreed to come out of Business Session in order to hear from the applicant regarding connectivity. Mr. Pregliasco asked that the case be continued to allow the applicant to file a revised plan. Staff and the Commissioners discussed the issue (See recording for detailed discussion.)

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.

02:13:40 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to a date uncertain.

The vote was as follows:

YES: Commissioners Clare, Pennix, Mims, Cheek, Howard, Fischer, Sistrunk, Carlson, and Lewis.

ABSENT: Commissioner Brown.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0145

***NOTE: Commissioner Cheek left the hearing at approximately 3:17 p.m. and did not hear or vote on this or the remaining cases.)**

Request:	Change in Zoning from R-4 to C-2, with Associated Detailed District Development Plan with Binding Elements, and Waivers
Project Name:	8006 National Turnpike Rezoning
Location:	8006 National Turnpike
Owner:	Robert & Jennifer Johnson
Applicant:	Robert Johnson
Representative:	CRP & Associates
Jurisdiction:	Louisville Metro
Council District:	13 - Dan Seum Jr.
Case Manager:	Dante St. Germain, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:14:49 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation.) She noted that, at the Land Development and Transportation Committee meeting, there were questions about where the vehicles would be displayed. Binding element #11 was added to address the concerns (see staff report.)

The following spoke in support of the request:

Charles Podgursky, 7321 New La Grange Road, Louisville, KY 40222

Summary of testimony of those in support:

02:20:50 Charles Podgursky, the applicant's representative, used the site plan to specify how the cars for sale will be displayed (see recording for detailed presentation.)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0145

02:23:00 In response to questions from Commissioner Clare, Mr. Podgursky discussed the diagonal parking spaces on the plan and the internal pedestrian circulation. Work will be done inside the garages. Commissioner Clare requested some type of marking or walkway striping to guide pedestrian traffic. Commissioner Mims said that Construction Review should look at accessible routes to all functions on the site.

02:25:52 In response to questions from Commissioner Carlson, Mr. Podgursky said the elevations being presented today were incorrect; that overhead door entrances to the garages were from the front **only**, not the front and rear. Ms. St. Germain discussed building design/articulation per the Land Development Code; and also changing binding element #4D (see recording.) She read a revision to that binding element into the record, as follows:

4D. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 2, 2023 Planning Commission meeting. *The renderings shall be submitted to, and approved by, staff.* A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.

The following spoke in opposition to the request:

No one spoke.

Deliberations:

02:29:30 Commissioners' deliberation.

02:29:50 The proposed waivers and the CUP were discussed (see recording for detailed discussion.)

02:33:48 The Commission came out of Business Session to ask the applicant's representative questions about why Waiver #1 was needed (see recording for detailed discussion.)

02:38:31 Commissioner Mims and Mr. Podgursky discussed the waiver. Mr. Podgursky said the applicant was trying to get a 24-foot driveway in this area. This might be reduced to 20 feet. Julia Williams, Planning & Design Manager, said that if it's a 25-foot buffer, then no waiver is required as long as they do the plantings and the screening (see recording for detailed discussion.)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0145

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.

02:43:15 On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **March 16, 2023** Planning Commission public hearing to allow staff and the applicant to work together regarding the landscape area on the north side.

The vote was as follows:

YES: Commissioners Fischer, Howard, Pennix, Clare, Mims, Carlson, and Lewis.

ABSTAIN: Commissioner Sistrunk.

ABSENT: Commissioner Brown.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

Request: Change in Zoning from R-4 to R-5, with Associated Major Preliminary Subdivision, Detailed District Development Plan with Binding Elements, and Waiver
Project Name: Pulte Cedar Creek Road Subdivision
Location: 9220 & 9224 Cedar Creek Road
Owner: Wendell E. Thommasson Revocable Living Trust
Applicant: Pulte Group
Representative: Bardenwerper, Talbott & Roberts
Jurisdiction: Louisville Metro
Council District: 22 - Robin Engel, 23 - Jeff Hudson
Case Manager: Dante St. Germain, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:44:20 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation.)

02:50:00 In response to a question from Commissioner Mims, Ms. St. Germain said there is R-5 property in this area (to the south.)

02:50:27 In response to a question from Commissioner Clare, Ms. St. Germain said the applicant has not agreed to a privacy fence, and there is no requirement in the Land Development Code for R-5 (versus R-4) to have a fence between.

The following spoke in support of the request:

John Talbott, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway
2nd Floor, Louisville, KY 40223

Derek Triplett, Land Design & Development, 503 Washburn Avenue Suite 101,
Louisville, KY 40222

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

Dennis Thomasson, 301 Deacon Trace, Taylorsville, KY 40021

Dan Hempel, Pulte Group, 10350 Ormsby Place Suite 103, Louisville, KY 40223

Summary of testimony of those in support:

02:50:55 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

03:01:12 Derek Triplett, an applicant's representative, presented details about the site plan, particularly regarding the drainage (see recording for detailed presentation.)

03:03:44 Mr. Talbott resumed and concluded his presentation.

03:05:11 Dennis Thomasson, representing the beneficiary of the Wendell A. Thomasson Trust, said he was available to answer any questions.

03:06:03 In response to questions from Commissioner Sistrunk, Mr. Talbott said that this development will be under a homeowner's association and that street trees will be provided by the developer. Dan Hempel, an applicant's representative, said that the landscape package includes some plantings and the street tree. The street tree is not "deed restricted" (not required to remain.) Mr. Talbott said that the trees in front of people's yards are not included in the 40% tree canopy calculation.

03:08:40 In response to questions from Commissioner Mims, Mr. Talbott said there is a 30-foot buffer with trees on it, for the houses that back up to Cedar Creek Road. Mr./ Triplett said the trees are Type A, with one planted per 45 feet along that frontage.

03:10:03 In response to questions from Commissioner Sistrunk, Mr. Talbott said there are no current plans to install a four-board horse fence along the Cedar Creek Road frontage. Commissioner Sistrunk asked if that fence could be considered.

03:11:25 In response to questions from Commissioner Carlson, Mr. Talbott used a slide to show connections between the subject site and an adjacent neighborhood and traffic patterns.

03:14:03 Mr. Triplett clarified that the Scenic Corridor requirements are a 6-foot visual barrier (either a berm, or shrubs, or evergreen plantings) be established along that frontage, and one Type A every 40 feet.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

03:14:20 In response to questions from Commissioner Lewis and Sistrunk, Mr. Talbott & Mr. Hempel discussed sidewalks along Cedar Creek, and elected to not provide the four-board fence due to enhanced screening & buffering along Cedar Creek. Commissioner Sistrunk pointed out locations along Cedar Creek that have four-board fences. Mr. Hempel said the applicant would be willing to do this fencing along the four properties that have frontages along Cedar Creek (see recording for detailed discussions.)

The following spoke neither for nor against the request (“Other”):

Paula Miles, 9930 Thixton Lane, Louisville, KY 40291

Summary of testimony of those neither for nor against:

03:17:12 Paula Miles said she is speaking on behalf of her parents, who live at the north property. She said her brother and his wife live on the back five acres, which back up to the property. She advocated for a privacy fence around the new development, and highlighted other concerns from the neighbors (see recording for detailed presentation.) Concerns included: The size of the lots and the number of houses proposed for 12 acres; increased traffic and speeding on Cedar Creek Road; residents want a four-way stop at the intersection of Fairmount and Cedar Creek Road; “wet and swampy” land at the back of the development and water diversion to adjoining properties; the potential destruction of existing trees; damage to trees on adjacent properties’ trees; privacy and security for adjacent homes; building homes on or near sinkholes.

The following spoke in opposition to the request:

Matt Sanders, 9116 Cedar Creek Road, Louisville, KY 40291

Summary of testimony of those in opposition:

03:24:30 Matt Sanders said he lives a few houses up from the subject site. His concerns include: Increased density, increased traffic; and traffic safety issues (he said there is a large community of bicyclists that use this area). He also requested a four-way stop at the intersection of Fairmount and Cedar Creek Road;

Rebuttal:

03:27:28 Mr. Talbott delivered rebuttal (see recording for detailed presentation.)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

03:29:31 Commissioner Carlson questioned Mr. Talbott's use of "housing shortage", which he said usually means "affordable housing". Mr. Talbott said there is no affordable housing planned for this project.

03:31:08 In response to questions from Commissioner Carlson, Mr. Triplett said there was no requirement for a karst survey; however, geotechnical engineers will be on-site during construction making recommendations as necessary.

03:32:02 In response to questions from Commissioner Carlson, Beth Stuber, with Metro Transportation Planning, said the possibility of a four-way stop at Fairmount and Cedar Creek Road is "very unlikely". It would have to meet the warrants for a stop signal (see recording for detailed explanation.) This would be a Metro decision, not State.

03:33:54 In response to a question from Commissioner Pennix, Ms. Miles said she had collected about 25 signatures on her petition from people interested in a privacy fence.

Deliberations:

03:35:38 Commissioners' deliberation.

03:37:11 Ms. St. Germain read a proposed binding element into the record, which the applicant has agreed to, as follows:

A four-board horse fence shall be provided along the Cedar Creek Road frontage (Lots 1 – 4). Maintenance of the fence shall be the responsibility of the developer, until such time as control of the Homeowners' Association is turned over to the homeowners, at which point maintenance responsibility shall transfer to the HOA.

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.

Change in zoning from R-4 Single Family Residential to R-5 Single Family Residential

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

03:37:41 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the proposal is not for higher density or intensity use; and the proposal is not substantially different in scale or intensity or density compared with the development around it; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the proposal would permit new development providing residential uses; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because no distinctive cultural features are evident on the site; and no historic assets are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the proposal is not for higher density or intensity zoning; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the development is through areas of similar intensity and density; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by bicycle and car. Access via transit, or by or people with disabilities may be improved by the redevelopment of the site; Transportation Planning has approved the proposal; and no direct residential access to high speed roadways is proposed; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because the site is largely cleared at this time and tree canopy will be provided with the

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

development; no karst features are evident on the site; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would increase the variety of housing types in the neighborhood by permitting housing on smaller lots than is typical for the immediate vicinity; and the proposal would support aging in place by providing smaller, lower-cost homes in an established neighborhood, thereby increasing housing choice for persons who may wish to remain in the neighborhood as they age; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposed zoning district would permit inter-generational mixed-income development. The site would be connected to the neighborhood and the surrounding area; and the site is not located on or near a transit corridor; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in the neighborhood, and within Louisville Metro; no existing residents would be displaced by the proposal; and the proposal would permit accessory dwelling units; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4 Single Family Residential to R-5 Single Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

Waiver from 7.3.30.E to permit a rear yard to overlap with a drainage easement by more than 15% (22-WAIVER-0223)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

03:38:42 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that 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 Commission further finds that 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 Commission further finds that 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 Commission further finds that 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 yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from 7.3.30.E to permit a rear yard to overlap with a drainage easement by more than 15% (22-WAIVER-0223)

The vote was as follows:

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

Major Preliminary Subdivision (22-MSUB-0012)

03:39:33 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

WHEREAS, the Louisville Metro Planning Commission finds that the site is mostly cleared and no natural resources are evident on the site. Required tree canopy will be provided; and

WHEREAS, the Commission further finds that 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, the Commission further finds that no open space provisions are pertinent to the request; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design is in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the neighborhood at a similar scale an intensity to existing development; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040 with the exception of the requested waiver; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Major Preliminary Subdivision Plan (22-MSUB-0012).

The vote was as follows:

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

Detailed District Development Plan with Binding Elements

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

03:40:12 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is mostly cleared and no natural resources are evident on the site. Required tree canopy will be provided; and

WHEREAS, the Commission further finds that 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, the Commission further finds that no open space provisions are pertinent to the request; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design is in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the neighborhood at a similar scale an intensity to existing development; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040 with the exception of the requested waiver; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

2. 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.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right- of-way to Cedar Creek Road to provide a total of 40 feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit. If necessary, the dedication can be shown on the record plat.
 - c. 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.
 - d. 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.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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,

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

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. 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."
8. 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.
9. 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."
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. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for "Proposed Amaranth Drive". Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

12. 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.
13. 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.
14. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
15. 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.
16. The signature entrance shall be submitted to the Planning Commission staff for review and approval.
17. A four-board horse fence shall be provided along the Cedar Creek Road frontage (Lots 1 – 4). Maintenance of the fence shall be the responsibility of the developer, until such time as control of the Homeowners' Association is turned over to the homeowners, at which point maintenance responsibility shall transfer to the HOA.

The vote was as follows:

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0149

YES: Commissioners Howard, Mims, Clare, Fischer, Sistrunk, Carlson, and Lewis.

ABSTAIN: Commissioner Pennix.

ABSENT: Commissioner Brown.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

Request:	Change in Zoning from R-4 to R-6, with Associated Detailed District Development Plan with Binding Elements, and Variance and Waiver
Project Name:	Terry Road Apartments
Location:	5127 Terry Road
Owner:	Ambvit Realty, LLC
Applicant:	LDG
Representative:	Dinsmore & Shohl
Jurisdiction:	Louisville Metro
Council District:	1 - Tammy Hawkins
Case Manager:	Dante St. Germain, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

03:45:41 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation.)

03:56:43 In response to questions from Commissioner Mims, Ms. St. Germain discussed connection issues regarding Joy Drive and Harvest Drive (see recording for detailed discussion.)

03:58:48 Commissioner Mims and Ms. St. Germain discussed the size of the property to the south.

03:59:02 Commissioner Mims and Ms. St. Germain discussed the requests from adjoining property owners regarding enhanced landscaping, and the Land Development Code requirements for landscaping, tree planting, screening and buffering.

The following spoke in support of the request:

Cliff Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

Derek Triplett, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Diane Zimmerman, 12803 High Meadows Pike, Prospect, KY 40059

Summary of testimony of those in support:

03:59:41 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He noted that Joy Drive will be continued through the subject site as a public road, thus complying with the Land Development Code.

04:05:17 Derek Triplett, an applicant's representative, discussed the site plan, particularly points of access, drainage, greenspace, buffering, fencing, setback, and fire access for all buildings (see recording for detailed presentation.)

04:13:50 Diane Zimmerman, traffic engineer, presented the traffic impact study (see recording for detailed presentation.) A left-turn lane is warranted and is being provided.

04:14:56 Mr. Ashburner resumed the presentation. He discussed each binding element requested by the opposition (see recording for detailed discussion.)

04:22:31 In response to questions from Commissioner Carlson, Mr. Ashburner said that the solid fencing will be vinyl. The chain link fence across Harvest Drive is being removed. Joy Drive will still be a private road. Mr. Ashburner discussed traffic flow and connectivity, and said that the owner of Joy Drive is responsible for fixing potholes, regular maintenance etc.

04:25:48 In response to questions from Commissioner Pennix, Mr. Ashburner said the rent for the proposed apartments will be market-rate.

04:27:19 In response to questions from Commissioner Mims, Mr. Triplett discussed the elevations presented today and said the apartment building is at an estimated lower finished floor elevation than the adjacent homes; also discussed roof pitch.

04:28:22 Commissioner Sistrunk asked if it is the applicant's intention to sink the new apartments lower than the existing finished floor of the adjoining residences? Mr. Triplett said it is their intent to balance the subject site and work with the existing topography as much as possible. The applicant has not yet done a full grading plan. Mr. Ashburner noted that this whole area is relatively flat (see recording for detailed discussion.)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

04:33:07 In response to questions from Commissioner Clare, Mr. Triplett discussed drainage (see recording for detailed discussion.)

04:33:56 In response to questions from Commissioner Pennix, Mr. Ashburner said the trees along the subject property would probably be removed because there is no way to build a drainage swale with existing trees (see recording.) Any trees not on the subject property would not be disturbed.

04:34:56 In response to questions from Commissioners Howard, Clare, and Sistrunk, Mr. Ashburner said the developer did not know yet what the colors of the buildings will be. Variety of design was discussed. Mr. Ashburner said that, if a binding element was going to be discussed, the applicant would ask that any decision to approve those plans would be given some guidance by the Planning Commission but ultimately left to the Urban Design staff (see recording.)

04:38:20 Laura Ferguson, legal counsel for the Planning Commission, suggested that the binding element on final elevation renderings could be modified, as follows:

Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall use at least three color variations, and be substantially similar to what was presented that the March 2, 2023 Planning Commission public hearing.

Mr. Ashburner said he would discuss with the applicant and give their response during rebuttal.

The following spoke neither for nor against (“Other”):

Troy Kerr, PRP Fire Department, 9500 Stonestreet Road, Louisville, KY 40272

Summary of testimony of those neither for nor against:

04:39:33 Troy Kerr, PRP Fire Department, asked for confirmation that there will be no fence or barrier across the connecting street/s. He discussed the fire truck diagram that was provided (travel route) and said there were concerns that a fire apparatus could not get close enough to proposed Building #2 to service it.

The following spoke in opposition to the request:

Tina Burnell, 3210 Huberta Drive, Louisville, KY 40216

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

David Heath, 5607 Land Cross Drive, Louisville, KY 40216

Judith Schmuckie, 3214 Lemmah Drive, Louisville, KY 40216

Stuart Holder, 3213 Huberta Drive, Louisville, KY 40216

Gina Davis, 3205 Huberta Drive, Louisville, KY 40216

Summary of testimony of those in opposition:

04:41:54 Stuart Holder said he opposed the proposal because of the height of the buildings and increased access to their subdivision. He said the access points being proposed create two offset T intersections, which are on the curve on Terry Road. The curve limits sight distance to the intersections (see recording for detailed presentation.)

04:46:12 Tina Burnett showed a Power Point presentation (See recording for detailed presentation.) Her concerns include: increased traffic; the community already has multiple apartment complexes, including six in the works within a five-mile radius; scale, height and design are incompatible (three-story apartments next to single-story homes); She requested that the apartment buildings be scaled down to two stories instead of three. She showed a list of binding elements requested by the opposition.

04:56:20 David Heath said LDG had four more apartment complexes in their area, and said that apartment complexes “keep people in a rent-trap”.

04:58:04 Judith Schmuckie said the way to promote generational wealth is through home ownership, not rental. She said affordable homes should have been proposed here, not apartments.

05:00:12 Gina Davis said she would prefer to see affordable housing, not another apartment complex. She discussed traffic concerns. She said 216 apartments are more dwelling units than those in their entire subdivision.

05:04:08 In response to questions from Commissioner Pennix, Diane Zimmerman discussed sight range and traffic, particularly how traffic will be impacted at Terry Road and Cane Run Road and also at Lees Lane and Cane Run. She said the KYTC have evaluated and approved the entrances (see recording for detailed discussion.)

05:07:06 In response to questions from Commissioner Pennix, Mr. Ashburner said the applicant wants to maintain the proposed 3 story buildings.

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

05:08:21 In response to questions from Commissioner Lewis, Mr. Ashburner said the structures are proposed to be 39 feet tall, with a 5/12 roof slope. The variance request is four feet.

05:11:04 In response to questions from Commissioner Mims, Ms. Ashburner said no stub street had been proposed for the property to the south because it is likely to become commercial (see recording.) Speed humps were discussed; Mr. Ashburner said the applicant cannot put speed humps on a public road.

05:15:48 Mr., Ashburner addressed questions from Mr. Kerr (PRP Fire) regarding landscape islands. He said the applicant is willing to modify some of the landscape islands near Building #2 to ensure adequate room for fire apparatus.

05:16:51 In response to questions from Commissioner Carlson, Mr. Ashburner discussed ceiling height and said the applicant wants to keep them at nine feet (see recording for detailed discussion.)

05:20:41 Commissioner Carlson and Mr. Ashburner discussed speed humps. Mr. Ashburner said the applicant would be willing to fund them on their property.

05:22:01 Commissioner Carlson asked for a binding element regarding enhanced landscaping; the vinyl fence; the colors of the structures; will work with PRP Fire Department regarding access to Building #2.

05:23:59 Commissioner Pennix asked if the applicant would put a speed bump at Joy and Harvest that the applicant would pay for. Mr. Ashburner said the applicant should consult with PRP Fire Department. They would be willing to put one at Harvest; but was not sure about Joy Drive.

05:26:26 In response to comments from Commissioner Pennix, Mr. Ashburner discussed the building height issue (see recording for detailed discussion.)

05:30:06 Commissioner Howard noted that, if the buildings were two stories instead of three, the yard requirements would be 15 feet from the existing homes, instead of the 50 feet required for a three-story structure. Mr. Ashburner said the entire 50 feet will be landscaped.

05:31:27 In response to questions from Commissioner Mims, Mr. Triplett reviewed why the mature trees adjacent to the existing homes would be removed (MSD's requirement to build a drainage swale; see recording for detailed discussion.)

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

Rebuttal:

05:33:31 Mr. Ashburner delivered rebuttal (see recording.)

05:57:35 The Commissioners, Ms. St. German, Ms. Ferguson, and Mr. Ashburner discussed proposed binding elements (see recording.):

Deliberations:

05:52:47 Commissioners' deliberation.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Change in zoning from R-4 Single Family Residential to R-6 Multi-Family Residential

05:55:06 On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the proposal is not for higher density or intensity zoning. The site is located relatively close to commercial development, and Terry Road is a transit corridor near the site; and appropriate transitions will be provided; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the proposal would permit new development providing residential uses; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because no distinctive cultural features are evident on the site and no historic assets are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the proposal is not for higher density or intensity zoning. The site is close to commercial development and a workplace form district along Greenbelt Highway; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is via Terry Road, a minor arterial at this location; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by car, bicycle, transit and pedestrians. The development of the site will improve access by people with disabilities; Transportation Planning has approved the proposal; and no direct residential access to high-speed roadways is proposed; and

WHEREAS. The Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because required tree canopy will be provided on the site; the site is not located on karst terrain; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would increase the variety of housing types in the neighborhood; and the proposed zoning district would support aging in place by increasing the variety of housing in the neighborhood; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposed zoning district would permit inter-generational mixed-income development that is connected to the neighborhood and the surrounding area; and the site is located in proximity to an activity center at Greenbelt Highway and is in proximity to a transit corridor along Terry Road; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would increase the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in Louisville Metro. No existing residents will be displaced by the proposal; and the proposed zoning district would permit the use of innovative methods of housing; now, therefore be it

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-4 Single Family Residential to R-6 Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Clare, Pennix, Howard, Carlson, Fischer, Sistrunk, Mims, and Lewis.

ABSENT: Commissioner Brown.

Variance from Table 5.3.1 to permit structures to exceed the maximum allowable building height (allowed: 35', requested: 39', variance of 4') (22-VARIANCE-0164)

05:56:08 On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health, safety or welfare as the increase in building height will not affect sight lines or provide any other public health, safety or welfare issues; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the variance requested is relatively small and unlikely to be apparent to the public; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the increase in height is relatively small and unlikely to be visible to the public; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the requested variance is relatively small and is needed to provide an extra foot of interior height for each floor to provide higher ceilings; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

which relief is sought as no construction has yet taken place and the variance is being sought at this time; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Variance** from Table 5.3.1 to permit structures to exceed the maximum allowable building height (allowed: 35', requested: 39', variance of 4') (22-VARIANCE-0164).

The vote was as follows:

YES: Commissioners Clare, Pennix, Howard, Fischer, Sistrunk, Mims, and Lewis.

ABSTAIN: Commissioner Carlson.

ABSENT: Commissioner Brown.

Waiver from 5.9.2.A.1.a.ii to not provide required connectivity to the properties to the south and the east (22-WAIVER-0233)

05:57:38 On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the property to the south is likely to be developed as a contractor's shop, and the property to the east is encumbered with floodplain and a utility easement, and is therefore unlikely to develop in the future; and

WHEREAS, the Commission further finds that the waiver not will violate specific guidelines of Plan 2040 as Plan 2040 encourages connectivity to provide pedestrian and vehicular connections which enable better travel through adjoining sites. Connectivity to the adjoining sites in question would be unlikely to be used in the future; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as the site is undeveloped at this time, and the site plan could be changed so as to provide the connections; and

WHEREAS, the Commission further finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

compliance with the requirements to be waived as an easement is being provided to the property to the east, to permit access to maintain the easement or enable emergency vehicles to reach the site; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver** from 5.9.2.A.1.a.ii to not provide required connectivity to the properties to the south and the east (22-WAIVER-0233)

The vote was as follows:

YES: Commissioners Clare, Pennix, Howard, Fischer, Carlson, Sistrunk, Mims, and Lewis.

ABSENT: Commissioner Brown.

Detailed District Development Plan with Binding Elements

05:59:36 On a motion by Commissioner Mims, seconded by Commissioner Sistrunk, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is mostly cleared at this time and no natural resources are evident on the site. Required tree canopy will be provided; and

WHEREAS, the Commission further finds that 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, the Commission further finds that required open space and recreational open space are being provided to meet the needs of the proposed development; and

WHEREAS the Commission further finds that 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

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The proposal would provide residential development in proximity with existing residential development; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, with the exception of the requested waiver and variance; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. The landscape plan shall include, at a minimum, the landscaping shown at the March 2, 2023

PLANNING COMMISSION

March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

Planning Commission public hearing. Screening shall be achieved with a six-foot vinyl fence as shown or as agreed to with Planning & Design staff.

- 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. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall use at least three color variations for the buildings, and shall be substantially similar to those presented at the March 2, 2023 Planning Commission public hearing. A copy of the approved rendering shall be 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. Speed humps shall be funded or constructed as preferred by Public Works on Lemmah Drive, Harvest Drive, and Joy Drive in the general vicinity of the circles shown on Exhibit 1, provided that approval is obtained in accordance with Louisville Metro Speed Hump policy.
 8. Construction plans shall be designed in consultation with Pleasure Ridge Park Fire Marshal with respect to the fire access to Building #2.

The vote was as follows:

YES: Commissioners Clare, Pennix, Howard, Fischer, Carlson, Sistrunk, Mims, and Lewis.

PLANNING COMMISSION
March 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0050

ABSENT: Commissioner Brown.

PLANNING COMMISSION
March 2, 2023

ADJOURNMENT

The meeting adjourned at approximately 7:22 p.m.

Chairman

Division Director