

PLANNING COMMISSION MINUTES

August 17, 2023

PUBLIC HEARING

CASE NO. 23-DDP-0034

Request:	Revised Detailed District Development Plan
Project Name:	The Path Off Cane Run
Location:	4516 Cane Run Road
Owner:	LDG Land Holdings LLC
Applicant:	LDG Land Holdings LLC
Representative:	Dinsmore & Shohl LLP
Jurisdiction:	Louisville Metro
Council District:	1 – Tammy Hawkins
Case Manager:	Ethan Lett, Planner I

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:

01:17:40 Ethan Lett presented the case and produced a Power Point presentation (see video). This case was heard at the August 16, 2023 Development Review Committee meeting and was placed on this agenda due to a lack of a unanimous decision. The applicant is proposing a revised plan to change the development on the site from 106 townhomes to 128 apartment units.

The following spoke in support of the proposal:

Cliff Ashburner, Dinsmore & Shohl, 101 S. Fifth Street #2500, Louisville, KY 40202

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

Michael Gross, LDG Development, 545 S 3rd Street, Louisville, KY 40202

Summary of testimony of those in support:

01:22:30 Cliff Ashburner spoke in support of the application and presented a PowerPoint presentation (see video). Ashburner discussed the site history and the proposed differences between the previously approved plan and this proposal. There is a significant increase in the amount of open space and preserved tree canopy being provided on the proposed plan.

Commissioner Pennix asked the applicant to explain why the change in unity type has been approved. Ashburner explained the plan changes are necessary because the cost

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to construct the townhome project impacted LDG's ability to provide affordable rents. The proposed units will be able to achieve affordable rents while serving the same target populations (families) as before.

Commissioner Mims asked the applicant to clarify their tree clearing expectations for the site. Ashburner said the southernmost portion of the area could be an area where additional trees are being preserved since the developable area is being pulled to the north.

Commissioner Lewis asked about the increase in units. Ashburner said the building layouts and apartment sizes lent itself to having more units.

The following spoke as neither in support or opposition:

Cindi Fowler, 501 W. Jefferson Street, Louisville, KY 40202

Summary of testimony of those neither for nor against:

01:44:50 Cindi Fowler spoke about the proposal. One of the concerns she has is the most recent plan was approved during a period when there was not a Metro Council representative for this district. This type of change concerns her, and she believes Metro Council should take a closer look at applications where the plan is significantly changed so soon after original approval.

The following spoke in opposition to the request:

James Jones, 6326 Winding Stream Drive, Louisville, KY 40272

Tina Burnell, 3210 Huberta Drive, Louisville, KY 40216

Summary of testimony of those in opposition:

01:52:08 James Jones spoke in opposition to the request. Jones has concerns about the "bait and switch" nature of the request and thinks the call for apartments in this area is causing saturation of that type of housing in the area.

01:55:53 Tina Burnell spoke in opposition to the request. She has many of the same concerns as Mr. Jones, and wishes the applicant would honor the townhome development plan. There have been hearings recently about the conditions of some of the applicant's developments.

Rebuttal:

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02:00:40 Cliff Ashburner provided rebuttal to the opposition's testimony. Ashburner stated they would be willing to add a binding element to offer all the property within 260 feet of the southern property line as preserved tree canopy. Ashburner stated this is not a "bait and switch" type of situation, because the applicant fully intended to develop the townhome development that was previously approved. Some of the comments heard today are not accurate, especially when it comes to the recent hearings conducted by the Metro Council committee.

Commissioner Mims asked if the applicant would be willing to add a binding element that says future changes to the development plan would go to Metro Council. Ashburner stated they were not agreeable to that request.

Deliberation:

02:09:10 Commissioner deliberation. Commissioner Mims said he does not believe the change in unit type is inconsistent with the Comp Plan perspective and believes this will be a better plan because of the additional tree preservation. Commissioner Sistrunk agreed with that assessment and that townhomes are more expensive to develop.

Commissioner Carlson said the applicant had made such a strong case for the townhome development when they sought that approval that it is hard to accept this change. Commissioner Pennix agreed and expressed concern about the lack of housing diversity in this area.

An audio/visual recording of the Development Review Committee meeting 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.

Revised Detailed District Development Plan

02:20:41 A motion was made by Commissioner Howard to deny the revised plan, seconded by Commissioner Carlson, based on evidence and testimony heard today.

The vote was as follows:

YES: Commissioners Howard, Carlson, and Pennix

NO: Commissioners Fischer, Kern, Mims, and Sistrunk.

NOT PRESENT FOR THIS CASE: Commissioners Clare and Cheek

ABSTAIN: Commissioner Lewis

The motion did not pass.

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The commissioners resumed deliberation.

Revised Detailed District Development Plan

02:38:40 On a motion by Commissioner Mims, seconded by Commissioner Fischer, the following resolution based staff report, applicant and staff testimony heard today, exhibits presented at today's meeting, and staff analysis, was adopted:

WHEREAS, the conservation of natural resources on the property is provided for by subdividing the site so that a portion of the lot containing flood plains is located on its own non-buildable tract. Existing tree canopy is being preserved and additional canopy will be provided to meet the requirements of the Land Development Code, and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan, and

WHEREAS, open space will be provided to meet Land Development Code requirements, and

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

WHEREAS, the overall site design and land uses are compatible with the existing and future development of the area. The area in the vicinity of the subject site is an established, predominantly residential area with a mix of single-family and higher-density multi-family developments. The subject site incorporates tree canopy and open space to reduce the impact of the development on adjacent residences and to provide buffering and screening between properties of varying densities and the abutting roadway. Buildings and parking lots will meet all required setbacks, and

WHEREAS, the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code. Housing Goal 1, Policy 3 encourages developers to offer a variety of housing types that meet the needs of all residents including an adequate supply of affordable housing and physically accessible housing. The proposed development will provide quality affordable units in an established neighborhood and in proximity to multi-modal transportation amenities; now, therefore be it

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RESOLVED the Louisville Metro Planning Commission does hereby to **APPROVE** the requested Revised Detailed District Development Plan **ON CONDITION** the clearing limits will be extended 260 feet north from the southern property line (nearest Clarinet Drive) and to be labeled as Tree Preservation Protection Area and **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) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
 - d. 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.
 - 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.

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- f. The materials and design of the of proposed structures shall be substantially the same as depicted in the rendering as presented at the August 17, 2023, Planning Commission meeting.
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. Upon approval of this proposal, the tract labeled "Tract 2" on the associated development plan shall not be sold separately, subdivided, or developed further unless approved by the Planning Commission.

The vote was as follows:

YES: Commissioners Mims, Fischer, Sistrunk and Kern.

NO: Commissioners Howard, Carlson and Pennix.

NOT PRESENT FOR THIS CASE: Commissioners Clare and Cheek

ABSTAIN: Commissioner Lewis.