

PLANNING COMMISSION MINUTES
October 5, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0105

Request: Change in Zoning from R-4 & C-1 to R-6 with a District Development Plan with Binding Elements and a Waiver
Project Name: Friess Old Bardstown
Location: 9408 & 9500 Old Bardstown Road
Owner: Roger Dale Perkins Estate; Michael & Laura Schnell
Applicant: Friess Property Company
Representative: Bardenwerper, Talbott and Roberts
Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel
Case Manager: Jay Lockett, AICP, Planning Supervisor

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:46:03 Jay Lockett discussed the case summary, standard of review and staff analysis from the staff report (see video for PowerPoint presentation). The applicant is proposing a residential development on the site. The Land Development & Transportation Committee had debated the proposed connection shown at the north end of the plan to facilitate future development to the north or west.

Commissioner Carlson asked for clarification about the extent of the paving for the proposed connection to the north. Lockett stated the applicant is willing to pave to the edge of the right-of-way, and if/when the connection is needed just an encroachment permit would be needed to connect to Old Bardstown Road.

The following spoke in favor of this request:

Bissell Roberts, Bardenwerper, Talbott & Roberts, 1000 N. Hurstbourne Parkway, Louisville, KY 40223

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

Summary of testimony of those in favor:

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00:55:41 Bissell Roberts spoke in support of the application and presented a PowerPoint presentation (see video for details). Roberts stated the applicant is agreeable to the \$29,500 contribution for the turn lane as stated in the proposed binding element. The applicant is requesting to downzone a portion of the property from commercial in order to do the proposed residential development.

01:13:03 Daniel Friess spoke in support of the application. Fries stated the connectivity has caused a design challenge to the proposal.

01:15:55 Commissioner Mims asked for clarification about where the developer's contribution would go if/when it is made. Commissioner Kern said the funds would be placed on hold until the rest of the funds could be secured.

Commissioner Cheek asked how staff and/or the applicant will address the connection if the adjoining property is developed at a more intense use than that of the subject site. Jay Luckett said staff would have to review any proposals to see what, if any, impact a future development may have on the stub if it is something that is considered to be more intense than the development on this site. Julia Williams provided an overview of how connections between different uses are addressed in Plan 2040 and the Land Development Code.

Deliberation:

01:27:30 Planning Commission deliberation. Commissioner Kern does not like the connection as proposed. Commissioner Cheek stated there is a need for diverse housing in this corridor and the applicant's proposed contributions and changes to the plan are bringing just that.

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

Zoning Change from R-4 & C-1 to R-6

01:36:28 On a motion by Commissioner Mims, seconded by Commissioner Cheek, the following resolution based on the staff report, applicant and staff testimony heard today and staff analysis, was adopted:

WHEREAS, the Planning Commission finds the proposal meets Plan 2040 Community Form: Goal 1 because the subject site is approximately 550 feet from Thixton Lane, and

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is adjacent to commercially zoned properties centered on Thixton Lane, Old Bardstown Road and Bardstown Road. There is a variety of zoning districts and uses in the area between Thixton Lane and the area near the Gene Snyder Freeway north of the subject site. Transit service along Bardstown Road currently ends approximately 1.5 miles to the north of the site. Adequate transitions in the form of buffering and screening will be provided adjacent to uses of a lower intensity,

WHEREAS, the proposal meets Community Form: Goal 2 because the proposed zoning change would allow for additional housing options in the area,

WHEREAS, the proposal meets Community Form: Goal 3 because the site does not have any known hydric soils, wetlands or highly erodible soils,

WHEREAS, the proposal meets Community Form: Goal 4 because the subject site contains a house and barn that are over 50 years old. Removal of these structures is subject to the wrecking ordinance if they are eligible for the National Register of Historic Places. Historic Preservation staff recommends adaptive re-use of the structures instead of demolition if possible,

WHEREAS, the proposal meets Mobility: Goal 1 because the site is approximately 2.5 miles south of Regional Center and Town Center forms located at Bardstown Road and the Gene Snyder Freeway. The site is within an existing and future activity center with a mix of zoning and uses centered on Old Bardstown Road, Thixton Lane and Bardstown Road,

WHEREAS, the proposal meets Mobility: Goal 2 because the site proposes private access directly from Old Bardstown Road,

WHEREAS, the proposal meets Mobility: Goal 3 because the proposed zoning district would allow for additional housing options within an area near employment opportunities and developing commercial activity centers. Transportation planning has approved the preliminary development plan. The site proposes direct private access to Old Bardstown Road,

WHEREAS, the proposal meets Community Facilities: Goal 2 because utility services will be coordinated. Water service will be coordinated with appropriate agencies. MSD has approved the proposal,

WHEREAS, the proposal meets Livability: Goal 1 because Karst Survey completed and no karst features are found on the subject site. The subject site is not within floodplain areas,

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WHEREAS, the proposal meets Housing: Goal 1 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. 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 vacant commercially zoned land,

WHEREAS, the proposal meets Housing: Goal 2 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. Old Bardstown Rd provides ready access to a transportation network that provides safe and convenient access to employment opportunities, services and amenities, and

WHEREAS, the proposal meets Housing: Goal 3 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. 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

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council **APPROVE** the change in zoning from R-4 & C-1 to R-6 on property described in the legal description.

The vote was as follows:

YES: Commissioners Mims, Carlson, Cheek, Kern, Fischer, Howard and Lewis
NOT PRESENT FOR THIS CASE: Commissioners Sistrunk, Pennix, and Clare

Waiver of LDC Section 10.2.10

01:37:50 On a motion by Commissioner Mims, seconded by Commissioner Cheek, the following resolution based on the staff report, applicant's testimony today, and Staff Analysis, was adopted:

WHEREAS, the waiver will not adversely affect adjacent property owners since all required planting and screening will be provided around the subject site adjacent to properties with differing intensities,

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WHEREAS, Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. All required screening and planting will be met on the subject site, except where relief is sought,

WHEREAS, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since all other Land Development Code requirements are being met on the subject site, and

WHEREAS, the strict application of the regulations would deprive the applicant of reasonable use of the land, as the Land Development and Transportation Committee has requested the pavement along the front to facilitate future cross connectivity in the area; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waivers.

The vote was as follows:

YES: Commissioners Mims, Carlson, Cheek, Kern, Fischer, Howard and Lewis
NOT PRESENT FOR THIS CASE: Commissioners Sistrunk, Pennix, and Clare

Detailed District Development Plan

01:38:35 On a motion by Commissioner Mims, seconded by Commissioner Cheek, the following resolution based on the staff report and applicant's testimony heard today, was adopted:

WHEREAS, there are no environmentally sensitive areas on the development site. An existing home and barn are proposed to be demolished,

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. A stub

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connection to the west will be provided to facilitate a more efficient transportation network as the area develops,

WHEREAS, all open space requirements of the Land Development Code are being met on the subject site,

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,

WHEREAS, the proposed 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 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, that the Louisville Metro Planning Commission does hereby **APPROVE** the 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. 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.

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- 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 minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - d. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall be substantially similar to those shown at the 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 shall provide a cost sharing contribution not to exceed \$29,500 for a right turn lane from Thixton Lane onto Bardstown Road. The contribution shall be provided prior to Public Works construction plan approval.
 7. In the event that the property to the west redevelops for a compatible residential development, the developer/property owner or successor shall establish a crossover access agreement in a form acceptable to the Planning Commission legal counsel.

The vote was as follows:

YES: Commissioners Mims, Carlson, Cheek, Kern, Fischer, Howard and Lewis
NOT PRESENT FOR THIS CASE: Commissioners Sistrunk, Pennix, and Clare