

PLANNING COMMISSION MINUTES

July 20, 2023

PUBLIC HEARING

CASE NO. 23-ZONE-0041

Request:	Change in zoning from R-4 Single Family to R-6 Multi-family with District Development Plan and Binding Elements
Project Name:	5323 New Cut Rd
Location:	5323 New Cut Rd
Owner:	Andre Management, LLC.
Applicant:	Andre Management, LLC.
Jurisdiction:	Louisville Metro
Council District:	21 – Betsy Ruhe
Case Manager:	Jay Lockett, AICP, Planner II

NOTE: Commissioners Sistrunk and Lewis left and did not vote on this case.

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:

04:00:17 Jay Lockett discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Sophia Mazzocco, 108 Daventry Lane, Suite 300, Louisville, Ky. 40223
Jose Andre, 9003 Thelma Lane, Louisville, Ky. 40220

Summary of testimony of those in favor:

04:03:51 John Talbott gave a power point presentation discussing the proposal (see recording for detailed presentation).

04:11:17 Sophia Mazzocco discussed the following: secondary entrance will be removed and improving the one to the north; additional parking has been requested; ADA requirements; maintaining existing drainage patterns; and screening (see recording for detailed presentation).

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04:12:40 John Talbott continued the power point presentation (see recording for detailed presentation).

04:15:44 Jose Andre described the proposed building (see recording for detailed presentation).

The following spoke in opposition to this request:

Suzi Wessel, 6815 Carolyn Road, Louisville, Ky. 40214
Rosemary Hauck McCandless, 418 West Kenwood Drive, Louisville, Ky. 40214
Barbara Nichols, 121 North Arbor Park, Louisville, Ky. 40214
Maureen Welch, 7101 Venetian Way, Louisville, Ky. 40214
Ann Ramser, 307 East Kenwood Drive, Louisville, Ky. 40214

Summary of testimony of those in opposition:

04:32:50 Suzi Wessel represents the Iroquois Neighborhood Association. The concerns are as follows: 23-WAIVER-0076; drainage; soil erosion; and steep slopes (see recording for detailed presentation).

04:39:16 Rosemary Hauck McCandless stated she's one of the original petitioners to have Kenwood Hill down-zoned (see recording for detailed presentation).

04:42:07 Barbara Nichols, President of the Iroquois Neighborhood Association, explained why they oppose the proposal (see recording for detailed presentation).

04:45:37 Maureen Welch said she agrees with some of the staff report but has the following concerns: environmental issues; increased residential density; and setting precedence for zoning change (see recording for detailed presentation).

04:51:57 Ann Ramser gave a power point presentation discussing the following: damage from some Kenwood Hill residents as well as soil studies; ordinances; Metro purchasing some property; LDC policies; and Planning Commission minutes from 2006 (see recording for detailed presentation).

The following spoke neither for nor against the request:

John Glowacki, 5327 New Cut Road, Louisville, Ky. 40214

Summary of testimony of those neither for nor against:

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04:27:42 John Glowacki stated when he moved there, a family was living in the proposed building. His main concern is property encroachment (see recording for detailed presentation).

Rebuttal

05:04:46 John Talbott stated this case will not set a precedent because all cases are heard on its own merit. There are no steep slopes or soil issues on this property. The Planning Commission needs to view this application solely from the Comprehensive Plan. The plan works, is appropriate and the city needs it (see recording for detailed presentation).

Deliberation

05:33:24 Planning Commission deliberation.

05:51:45 Commissioner Cheek asked if the request could be made for a lower zoning designation that would allow for 3 dwelling units. Joel Dock said R-5A allows for 5.7 dwelling units/acre and is less intense. Mr. Talbott and the applicant agree with amending the application to R-5A.

05:57:27 Acting Chair Carlson asked if the applicant would agree to a binding element limiting the number of dwelling units to 4. Mr. Talbott and the applicant agreed.

05:58:20 Julia Williams stated if the proposal is recommended for approval and action is taken on the development plan, then it would need to be on condition that the site data on the plan is changed. Mr. Talbott agreed.

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, Single-family Residential to R-5A, Multi-family Residential

On a motion by Commissioner Cheek, seconded by Commissioner Kern, the following resolution based on the Plan 2040 Staff Analysis 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 on New

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Cut Rd, a major arterial roadway. New Cut Rd has transit service and a generally complete sidewalk network. There are nearby employment opportunities, as well as multiple commercial centers in the vicinity; Adequate screening will be provided adjacent to uses of a lower intensity; and

WHEREAS, the Louisville Metro Planning Commission 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. The proposed development utilizes an existing residential structure; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the subject site does not have any distinctive cultural features. Staff recommends preservation of mature trees on the subject site; the subject site does not contain any historic resources. The applicant is proposing to renovate the existing structure; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the subject site is served by existing transit on New Cut Rd. The site is within half a mile of the Town Center area centered on 3rd Street Rd/Southside Dr with a wide variety of commercial uses. It is less than 1000 feet from a neighborhood commercial center at Kenwood Dr, including the Colonial Gardens development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the site utilizes existing access from New Cut Rd.; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, New Cut Rd allows for ready access to a multimodal transportation network. The proposed zoning district would allow for additional housing options within an area well served by transit and near employment opportunities; adequate roadways exist adjacent to and near the subject site. New Cut Rd has sidewalks adjacent to the subject site and transit service is available with the nearest stop in front of the adjacent property to the south of the subject site; adequate transportation facilities exist to serve the site; the proposed zoning is compatible with roadway improvements proposed by the New Cut Rd/Taylor Blvd Corridor Study; the site utilizes existing access from New Cut Rd. Sidewalk repairs

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or right-of-way dedication may be required to accommodate the proposed development; and

WHEREAS, the Louisville Metro Planning Commission 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; sewer service will be coordinated with MSD; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, staff recommends preservation of existing mature trees on the subject site; the subject site is not in a karst prone area. The site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns; The subject site is not within the floodplain; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposed zoning would allow for a variety of housing types. An existing structure on the site is proposed to be used for the development and will fit within the residential development pattern of the district; the proposed zoning district will help promote aging in place by providing additional housing type options. The site is served by transit and close to a variety of commercial uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the 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; New Cut Rd provides ready access to a multimodal transportation network that provides safe and convenient access to employment opportunities. The subject site is across the street from Iroquois Park and is near a variety of commercial uses providing amenities and services; and

WHEREAS, the Louisville Metro Planning Commission 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; the proposed zoning would allow for a variety of lotting patterns and unit types, allowing for production of fair and affordable housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby
RECOMMEND to the Louisville Metro Council the change in zoning from R-4, Single-

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Family Residential to R-5A, Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Cheek, Fischer, Kern and Carlson

NO: Commissioner Clare

NOT PRESENT AND NOT VOTING: Commissioners Mims, Pennix, Sistrunk, Howard and Lewis

Waiver of Land Development Code section 10.2.4 to permit proposed pavement and existing structure to encroach into the 20-foot Property Perimeter Property along the northern and southern property lines

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

WHEREAS, the waiver will not adversely affect adjacent property owners, as the applicant will still provide all required screening and planting around the subject site; and

WHEREAS, the waiver will not violate the Comprehensive Plan. The development will be in keeping with the pattern of the area and the encroachment allows the existing structure to remain; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, as the structure would need to be partially or fully demolished to comply with the buffer. Parking would need to be provided behind the structure, potentially disturbing steeper sloped areas in the rear of the site.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Waiver of Land Development Code section 10.2.4 to permit proposed pavement and existing structure to encroach into the 20-foot Property Perimeter Property along the northern and southern property lines.

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The vote was as follows:

YES: Commissioners Cheek, Fischer, Kern and Carlson

NO: Commissioner Clare

**NOT PRESENT AND NOT VOTING: Commissioners Mims, Pennix, Sistrunk,
Howard and Lewis**

06:02:53 Acting Chair Carlson opened the public hearing to ask the applicant if he agrees to a binding element stating if there are any increase to the footprint of the building or square footage increase of the building will need to be heard at Planning Commission. Mr. Talbott and the applicant agreed.

District Development Plan and Binding Elements

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

WHEREAS, the site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns. Disturbance is minimized on the site, especially in the rear where the slopes are steepest; 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, there are no open space requirements pertinent to the current proposal; 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. The existing structure is being utilized and fits into the prevailing character and setbacks of the area; and

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WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

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.
 - 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.
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

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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 number of dwelling units will be limited to 4.

7. Any increase to the footprint of the building or square footage of the building will need to be heard at Planning Commission for approval.

CONDITION OF APPROVAL

1. The site data on the plan shall be updated to reflect the zoning of R-5A.

The vote was as follows:

YES: Commissioners Cheek, Fischer, Kern and Carlson

NO: Commissioner Clare

NOT PRESENT AND NOT VOTING: Commissioners Mims, Pennix, Sistrunk, Howard and Lewis