

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

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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.)

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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 at 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

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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.

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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.)

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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

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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

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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

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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-

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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

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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

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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.

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ABSENT: Commissioner Brown.