

PLANNING COMMISSION

March 16, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0136

Request: Change in zoning from R-4 to R-7, with associated Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements, and Waiver

Project Name: Mt. Washington Road Apartments

Location: 5604, 5606, 5612, 5614 & 5616 Mt. Washington Road

Owner: Gloria & Clinton Walker, Bobby Wilson

Applicant: Highgates Management

Representative: Bardenwerper, Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 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:

06:25:44 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.)

06:35:05 In response to questions from Commissioner Mims, Ms. St. Germain and Beth Stuber, with Metro Transportation Planning, discussed State review of the roadways and sidewalks. Ms. St. Germain said the applicant should discuss their dialogues with KYTC. Ms. Stuber said she had a conversation with Jason Richardson (KYTC representative) regarding the sidewalks and work to be performed in the right-of-way. See recording for detailed discussion.

The following spoke in support of the request:

John Talbott, 1000 North Hurstbourne Parkway 2nd Floor, Louisville, KY 40223

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

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David Mindel, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Joseph Waldman and Brent Hackworth, 7301 Monsey Circle, Louisville, KY 40219

Chris Wilkerson, 5219 Mount Washington Road, Louisville, KY 40229

David Guelda, 10508 Jefferson Trace, Louisville, KY 40291

Jonathan Colbert, 12008 Parkside Vista Lane, Louisville, KY 40229 (signed in but had to leave the hearing)

Summary of testimony of those in support:

06:38:25 John Talbot, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

06:47:00 David Mindel, an applicant's representative, described the proposed road and intersection improvements (see recording for detailed presentation.)

06:52:09 Mr. Talbott resumed the presentation (see recording.)

06:56:00 Joseph Waldman, the applicant, discussed the proposed community center in more detail (See recording.)

06:56:55 In response to questions from Commissioner Cheek, Mr. Talbott discussed the proposed southern access through the Guelda property (see recording.) He noted that this is under contract, so that will be done in conjunction with this entire development.

06:57:28 In response to questions from Commissioner Mims, Mr. Talbott discussed the proposed sidewalks along Mount Washington Road and communications with KYTC. Mr. Waldman added that he was present here a couple of weeks ago and knocked on residents' doors to obtain residents' agreements for the sidewalks.

06:59:57 In response to questions from Commissioner Carlson, Mr. Mindel said that an exhibit was not shown regarding what the applicant is going to do on Preston Highway because that is a binding element. Mr. Talbott suggested adding language to the binding element stating that improvements will be made to Mount Washington Road and Preston Highway "...as shown **and described** at the March 16, 2023 Planning

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Commission..." This would also relate to the conceptual striping plan. Also add "roadway improvement exhibit".

07:02:16 Ms. St. Germain proposed a revised binding element #4f to read:

The applicant shall make improvements to the intersection at Mt. Washington Road and Preston Highway, and to Mt. Washington Road, including sidewalks, in a manner substantially similar to that shown **and described** at the March 16, 2023 Planning Commission hearing and located in the case file as "Conceptual Striping Plan", subject to Public Works and/or Kentucky Transportation Cabinet approval. These improvements shall be bonded at site construction plan approval. All improvements shall be completed no later than issuance of the certificate of occupancy for the 133rd dwelling unit.

07:02:51 In response to questions from Commissioner Mims, Mr. Mindel discussed the proposed left-turn lane, and the addition of traffic barriers (see recording.)

07:05:14 Chris Wilkerson said he feels the road improvements and sidewalks will be greatly beneficial in this area.

07:08:18 David Guelta said he owns the property to the west that the applicant is going to use to access this site. He said he does have an agreement to sell that to the applicant.

The following spoke in opposition to the request:

James Atkinson, 5500 Mount Washington Road, Louisville, KY 40229

Summary of testimony of those in opposition:

07:08:16 James Atkinson discussed traffic issues and had questions about the traffic study. He noted that the study shows that the development will affect multiple intersections (see recording for detailed discussion.) He said the three-story buildings are incompatible with the primarily one-story homes next to it (first and second tier properties.) He also discussed noise; the impact of downward-facing lighting on adjoining properties; wetlands and drainage; and "intense karst potential" / sinkholes in the area.

The following spoke neither for nor against:

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John Torsky, legislative aide to Councilman Jeff Hudson, 601 West Jefferson Street, Louisville, KY 40202

07:20:23 John Torsky spoke on behalf of Councilman Jeff Hudson. He said the Councilperson believes that the sidewalk along Mount Washington Road is an important aspect to this project and is greatly needed. He requested that the developer use a variety of colors and materials.

07:22:43 Regarding binding element #4e, Commissioner Mims requested mixing up the color schemes.

07:23:49 In response to questions from Commissioner Carlson, Mr. Atkinson said that his father-in-law's property is an adjoining property immediately to the west of the subject site. Commissioner Carlson suggested that Mr. Atkinson have discussions with the applicant about buffering his father-in-law's property with extra trees, etc.

07:26:57 In response to earlier questions, Ms. St. Germain said she had discussed color schemes with the applicant. She said they will agree to an addition to binding element #4e to include:

Building design shall include at least three different color schemes as approved by staff."

07:27:34 In response to questions from Commissioner Pennix, Mr. Talbott said the photos of the amenities shown today are from other sites that Highgate has developed, so they would be very similar on this site. Commissioner Pennix expressed concern about the size of the playground for the number of proposed units. Ms. St. Germain said that the playground shown on the plan is a little over 8,000 square feet. Brent Hackworth, an applicant, said the picture shown today was from a "sister" property, also developed by Highgates, which has only 264 units. This proposal is a larger development.

Rebuttal:

07:30:04 Mr. Talbott delivered rebuttal (see recording for detailed presentation.)

Mr. Talbott said the applicant is "willing to put as many trees as he wants" in the area of Mr. Atkinson's father-in-law's house. He noted that all of the proposed trees are not shown on the plan being presented today, but will be shown on the Landscape Plan.

07:30:49 Mr. Talbot reviewed the traffic and levels of service (see recording.)

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07:32:26 In response to questions from Commissioner Carlson, Mr. Mindel addressed Mr. Atkinson's comments about "karst features". He noted that a pre-blast survey will be done on applicable houses and blasting will be monitored with a seismograph (see recording.) Ms. St. Germain said there is a karst note on the plan.

07:35:00 In response to a question from Commissioner Mims, Mr. Talbott & Ms. St. Germain discussed a binding element for augmented landscaping/tree planting. Talbott – clustered; double the amount of trees; half deciduous and half evergreen. Mr. Talbott requested limiting the enhanced landscaping to 100 feet; Mr. Atkinson and his father-in-law can tell the applicant where they want that to begin and end (the Wilson property; 5510 Mount Washington Road.)

07:38:08 In response to concerns from Mr. Atkinson, Ms. St. Germain suggested a fence in addition to the trees. The Commissioners, Mr. Talbott, and Mr. Atkinson discussed fencing to deter cut-through pedestrians (see recording for detailed discussion.) Mr. Talbott said his client is willing to add a chain link fence along the same 100 feet, on the applicant's property line.

07:46:43 Julia Williams, Planning Manager, clarified the screening requirements per the Land Development Code.

Deliberation:

07:47:42 Commissioners' deliberation.

07:49:18 Laura Ferguson, legal counsel for the Planning Commission, read the following proposed binding element into the record:

All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.

07:49:50 Ms. St. Germain read a proposed addition to existing binding element #4c, to read as follows:

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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. *Twice the required tree plantings shall be provided within the 50-foot building setback along the Wilson property, located at 5510 Mount Washington Road, not to exceed 100 linear feet, closest to the house on that property. Half of the enhanced landscaping shall be Type A or B deciduous trees, and half shall be Type A or B evergreen trees.*

An audio/visual recording of the Planning Commission 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.

Change in zoning from R-4 Single Family Residential to R-7 Multi-Family Residential

07:51:22 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Staff Analysis and Standard of Review 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 site is located near a major activity center along Preston Highway, and relatively near a major employment center at Commerce Crossing; and appropriate transitions will be provided between the proposed development and the surrounding development; and

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

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no severe, steep or unstable slopes are evident on the site. A small portion of jurisdictional wetland is located on the site and is not proposed to be preserved; 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 sites are evident on the site; and

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WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the site is located close to Preston Highway, a major arterial and developing commercial corridor. Suburban Marketplace Corridor form is located along Preston Highway; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is via Mt. Washington Road, a primary collector at this location. Access to the site is not through areas of significantly lower intensity or density development; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the site is easily accessible by car and bicycle. Access by pedestrians and people with disabilities will be improved by the development. Access to transit may improve in the future as the corridor develops further; 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 tree canopy will be provided in compliance with the Land Development Code; no karst features are evident on the site; and the site is not located in the floodplain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposal would increase the variety of housing types and price points in the neighborhood; and the proposal would support aging in place by increase the variety of ownership options and price points in the neighborhood, allowing aging populations to downscale without leaving their neighborhood; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposal would encourage inter- generational mixed-income development that is connected to the neighborhood and surrounding area; and the proposal is not for higher density zoning. The site is in proximity to an employment center and an established activity center; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because the proposal would encourage provision of fair and affordable housing by increasing the variety of ownership options and unit costs in Louisville Metro; no existing

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residents will be displaced by the proposal; and the proposed zoning district would permit innovative methods of housing; now therefore be it

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-7 Multi-Family Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

ABSENT: Commissioners Clare and Fischer.

Waiver from 10.2.4.B.3 to permit a utility easement to overlap required Landscape Buffer Areas by more than 50% (22-WAIVER-0088)

07:52:18 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Staff Analysis and Standard of Review 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 required plantings will still be provided outside the overlap area; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The adjacent property will be adequately buffered; 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 easement is required and the LBA cannot be moved to eliminate the overlap; 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 because removing the overlap would seriously impact the development; now therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from 10.2.4.B.3 to permit a utility easement to overlap required Landscape Buffer Areas by more than 50% (22-WAIVER-0088).

The vote was as follows:

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

ABSENT: Commissioners Clare and Fischer.

Detailed District Development Plan/Major Preliminary Subdivision with Binding Elements

07:53:00 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution, based on the Staff Analysis and Standard of Review and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the site is mostly cleared at this time. Tree canopy will be provided as required by the Land Development Code; 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 open space is being provided in compliance with the requirements of the Land Development Code; 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 by permitting higher-density multi-family housing near a developing commercial corridor and major arterial street; and

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

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan/Major Preliminary Subdivision 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. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work done in the Mt. Washington Road or Preston Highway right-of-way.
 - c. The property owner/developer must obtain approval of a detailed plan for

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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. Twice the required tree plantings shall be provided within the 50-foot building setback along the Wilson property, located at 5510 Mount Washington Road, not to exceed 100 linear feet, closest to the house on that property. Half of the enhanced landscaping shall be Type A or B deciduous trees, and half shall be Type A or B evergreen trees.

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 16, 2023 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission. Building design shall include at least three different color schemes as approved by staff.
 - f. The applicant shall make improvements to the intersection at Mt. Washington Road and Preston Highway, and to Mt. Washington Road, including sidewalks, in a manner substantially similar to that shown and described at the March 16, 2023 Planning Commission hearing and located in the case file as "Conceptual Striping Plan", subject to Public Works and/or Kentucky Transportation Cabinet approval. These improvements shall be bonded at site construction plan approval. All improvements shall be completed no later than issuance of the certificate of occupancy for the 133rd dwelling unit.
- 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

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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. The development shall be limited to 199 units until a second separate access roadway connecting directly to an existing roadway is obtained pursuant to LDC 6.1.3.
8. The applicant shall either provide a stub to the property at 12115 Christman Drive or connect to the extended Garden Trace Drive, depending on the state of development of the approved preliminary subdivision plan for docket 21-MSUB-0012, Ashbrook Gardens Section 3, in compliance with LDC 5.9.2.A.1.a.
9. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.

The vote was as follows:

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

ABSENT: Commissioners Clare and Fischer.