Planning Commission Public Hearing
Staff Report
June 21, 2007

Case:	**8453**
Project Name:	**Kirkwood Glen**
Location:	**4308, 4310, 4314, 4316 Rudy Lane**
Owner(s):	**TWB Properties**
Applicant:	**TWB Properties**
Representative:	**Land Design & Development, Inc.** **Bardenwerper, Talbott & Roberts, PLLC**
Project Size/Area:	**7.5 Acres**
Jurisdiction:	**City of St. Matthews, City of Windy Hills**
Council District:	**7 – Ken Fleming**
Case Manager:	**Beth Allen, Planning Supervisor**

Request

The applicant requests approval of a change in zoning from R-3 and R-4 Single-Family Residential to R-5 Single-Family Residential and to subdivide the property into 21 buildable lots and 4 open space lots for a gross density of 3.0 du/acre.

The applicant also requests approval of variances of Section 4.7.C.2 of St. Matthews Land Development Code (LDC) & 5.3.1.C.2 (Table 5.3.1) of Louisville Metro LDC to reduce the required front yard setbacks from 25' to 10' on lots 1-21; **and** to reduce the rear yard setbacks from 25' to 5' on lots 16 an 17.

Staff Recommendation

Staff recommends **approval** of the zoning change and the development plan, and **approval** of the variances subject to all associated binding elements contained within this report.

Case Summary / Background

Summary

The subject site consists of five parcels of 7.5 acres in the Neighborhood Form District with frontage on Rudy Lane, a primary collector. The three larger parcels are currently zoned R-4 and the two smaller ones are zoned R-3. Part of the property is located within the City of Windy Hills and part within the City of St. Matthews.

The parcel is generally flat and open with each of the five parcels containing residential structures to be removed. There are a number of mature specimen trees on each of the lots. According to the Natural Resource Conservation (NRCS) soil report, the soils of the parcel are well-suited to the proposed development but are prone to erode easily upon removal of the protective cover of vegetation.

Site Context

There is primarily low-density residential zoning, all within the Neighborhood Form District, existing in the area surrounding the subject site. To the east of the property and continuing north across Rudy Lane are primarily R-3 zoned subdivisions. To the immediate north and west of the site are R-4 subdivisions, with some R-5 and R-6 further west toward Hubbards Lane. The tracts immediately surrounding the subject site on the west and south are zoned R-4 but each tract is approximately 2 acres in size. To the southeast of the site and across Westport Road, there are additional R-4 subdivisions. To the southwest and across Westport Road the form district changes to Suburban Marketplace Corridor within which there are commercial, industrial, and office-residential zones and uses.

Background/Previous Cases on Site

None

Land Use / Zoning District / Form District

	Land Use	Zoning	Form District
Subject			
Existing	Single-Family Residential	R-3, R-4	Neighborhood
Proposed	Single-Family Residential	R-5	Neighborhood
Surrounding			
North	Single Family Residential	R-3	Neighborhood
	Windsong Subdivision	R-4	Neighborhood
	Clear Creek & Deerfield Subdivisions	R-4	Neighborhood
South	Large Lot Single Family Residential	R-4	Neighborhood
	Woodwinds Subdivision (across Westport road)	R-4	Neighborhood
	Single Family Residential	R-4	Neighborhood
East	Foeburn Subdivision	R-3	Neighborhood
	Ashbrook Innovative Subdivision	R-3	Neighborhood
West	Large Lot Single Family Residential	R-4	Neighborhood
	Westport Heights Subdivision	R-4	Neighborhood
	Westport Gardens Subdivision	R-5	Neighborhood

Variances
The applicant is requesting the following variances:

Location	Requirement	Request	Variance
1. All lots (1-21)	25' Front Yard setback	10' setback	15'
2. Lots 16 & 17	25' Rear Yard setback	5'	20'

The applicant states that variances are being requested in order to allow a more compact urban-style development where what would normally be yard space has been transferred to the centralized open space lot. Staff finds that the variances are supportable given that St. Matthews has not adopted the new Land Development Code, which would have provided this developer with the option to pursue this development under a Planned Residential Development (PRD) zone change. The requested variances and waiver would be unnecessary in the PRD zoning district which provides the lot size and setback flexibility needed to accommodate more compact developments which provide common open space areas in exchange. The applicant has provided renderings that illustrate the proposed brick wall and landscape buffer treatment that will be used to screen the alleys and rears of houses from adjoining property owners, and from Rudy Lane.

Staff Findings: Relationship to Comprehensive Plan – Cornerstone 2020 Plan Elements

Community Form

1. The proposed R-5 zoning is compatible with this area given the existing range of zonings including R-3, R-4, and R-5 surrounding the site and its proximity to the Suburban Marketplace Corridor along Westport Road.

2. The development plan and design concept employ many of the plan elements that are strongly encouraged in the Comprehensive Plan including provision of a diverse housing type in the area, streets and open spaces that are designed to invite human interaction, and compactness of development at a more human scale that encourages pedestrian activity.

3. The applicant has provided renderings illustrating proposed construction materials, house types and sizes which indicate compatibility with surrounding houses.

4. Buffering and transitioning has been discussed as particularly important throughout the review of this project since the rear yards of the houses face Rudy Lane and the houses are closer than typical to the rear yard line due to the compactness of the development. The applicant has provided concept

renderings that show a 6 to 8' brick wall with offsets and a mixture of evergreen and buffer plantings within the 20' LBA along Rudy Lane.

5. The applicant has also provided renderings of proposed buffering between the alleys and adjacent properties. The renderings indicate that a 6' tall brick wall will be provided on the property perimeter where a neighboring property owner's house is adjacent. Where the wall is not immediately adjacent to a neighbor's house, it is proposed to be 3' tall.

6. A rendering for the central open space lot has also been provided indicating that a gazebo, sidewalks and a mixture of canopy and understory trees are proposed.

Mobility / Transportation

7. The Cities of St. Matthews and Windy Hills have approved the use of private alleys in the development as shown. The fire department has also approved the proposal

8. A stub has been provided to the west of the development and sidewalks have been provided as required on the interior of the site and along Rudy Lane.

Livability / Environment

9. The applicant has worked with MSD to provide two onsite detention as required to mitigate runoff from the site. According to MSD the proposed improvements required by the applicant may improve some of the surrounding drainage problems and at the very least will control runoff produced by the development itself.

10. While most of the property is in St. Matthews and is therefore not subject to the Tree Canopy requirements of the new code, the applicant has agreed to meet them anyway and has shown some of the specimen trees in the central open space lot and along Rudy Lane to be preserved.

<u>Staff Findings: Variance Requests</u>

1. **Variances of Section 4.7.C.2 of St. Matthews Land Development Code (LDC) & 5.3.1.C.2 (Table 5.3.1) of Louisville Metro LDC to reduce the required front yard setbacks from 25' to 10' on lots 1-21**
    a. **The variances will not adversely affect the public health, safety or welfare** because the variances will accommodate a more compact urban style of subdivision development with a central common area, which is encouraged and accommodated in the latest edition of the Land Development (LDC) that St. Matthews has not yet adopted; **and**
    b. **The variance will not alter the essential character of the general vicinity** because Rudy Lane has a highly varied visual corridor and the

development has proposed screening and buffering measures to maintain and contribute to this corridor; **and**

c. **The variance will not cause a hazard or a nuisance to the public** because they impact the front yards of the proposed houses only, which affects the interior of the development but not adjacent property owners in that the houses will simply be closer to the interior proposed road than is typical**; and**
d. **The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because** the need to request the variances can be tied to the unavailability of more accommodating regulations and zoning districts in the primary jurisdiction of the proposed development.

2. **Variances of Section 4.7.C.2 of St. Matthews Land Development Code (LDC) & 5.3.1.C.2 (Table 5.3.1) of Louisville Metro LDC to reduce the required rear yard setbacks from 25' to 5' on lots 16 and 17.**
   a. **The variances will not adversely affect the public health, safety or welfare** because the variances will accommodate a more compact urban style of subdivision development with a central common area, which is encouraged and accommodated in the latest edition of the Land Development (LDC) that St. Matthews has not yet adopted; **and**
   b. **The variance will not alter the essential character of the general vicinity** because Rudy Lane has a highly varied visual corridor and the development has proposed screening and buffering measures to maintain and contribute to this corridor; **and**
   c. **The variance will not cause a hazard or a nuisance to the public** because buffering measures have been proposed that will insulate adjoining property owners from any impacts**; and**
   d. **The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because** the need to request the variances can be tied to the unavailability of more accommodating regulations and zoning districts in the primary jurisdiction of the proposed development.

In making these findings staff considered:

The special circumstances which give rise to these variances are the specific design goals of the development that are also encouraged in Cornerstone 2020 but are not achievable under the current zoning regulations within the City of St. Matthews.
Strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land because it would force the applicant into a more sprawling development that is discouraged by Cornerstone 2020.
The circumstances are not the result of actions taken by the applicant subsequent to adoption of the regulations but are instead due to reasons specified above.

Citizen Concerns:
Staff received one letter of opposition from a resident along Rudy Lane. The letter is included at the end of staff report and states that the resident believes the proposal to be incompatible with existing subdivisions along Rudy Lane.

Relationship to Neighborhood, Small Area, Corridor or Other Plan(s)
This site is not in the area of any small area or neighborhood plans.

Technical Review
1. Clarify the boundary of/what is included in lot 1002; it appears that the area to the east of lot 21 is separated as another open space lot.
2. Remove waiver request from plans.

Standard of Review

Criteria for granting the proposed rezoning:
1. The proposed rezoning complies with the applicable guidelines and policies of Cornerstone 2020; OR
2. The existing zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved, which were not anticipated in Cornerstone 2020, which have substantially altered the basic character of the area.

Criteria for approving variance:
1. The proposed variance will not adversely affect the public health, safety or welfare; **and**
2. The proposed variance will not alter the essential character of the general vicinity; **and**
3. The proposed variance will not cause a hazard or a nuisance to the public; **and**
4. The proposed variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

In making these findings, you must consider whether:

(a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone;
(b) The 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; and

(c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Attached Documents / Information

- Location Map

Notification

The following forms of notification were provided pertaining to this proposal:

Date	Description	Recipients
4/13/07	Adjoining Property Owner Notice of LD&T Meeting	1st & 2nd Tier APOs & Registered Neighborhood Groups in District 7
5/21/07	Adjoining Property Owner Notice of Public Hearing	1st & 2nd Tier APOs & Registered Neighborhood Groups in District 7

Proposed Binding Elements

1. The development shall be in accordance with the approved District Development and Preliminary Subdivision Plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission. 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. The density of the development shall not exceed 3.0 dwelling units per acre (21 units on 7.5 acres).

3. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
    1. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
    2. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).

3. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
4. Location of construction fencing for each tree/tree mass designated to be preserved.

4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
   a. The development plan must receive full construction approval from *Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District.*
   b. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
   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. A minor plat or legal instrument shall be recorded creating the boundary of the proposed development. A copy of the recorded instrument shall be submitted to the Division of Planning & Design Services.

5. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

6. 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.

7. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

8. All plans setting out Tree Canopy Protection Areas (TCPAs) must contain the following notes:
   a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1of the Land Development Code and are to be permanently protected. All

clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.

b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent minimum distances. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
c. Tree protection fencing shall be erected around all TCPAs prior to site disturbance to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed, the fence shall be relocated to protect all remaining trees within that TCPA.
d. No parking, material storage, or construction activities are permitted within the TCPAs beyond that allowed for preliminary site investigation work.
g. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed twelve (12) feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at breast height (DBH) shall be removed without prior approval by DPDS.

9. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
   a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
   b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas, open space, TCPAs, WPAs.
   c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

10. 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.

11. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

12. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10. Said plans shall be submitted for review and approval prior to recording the record plat.

13. There shall be language in the deed restrictions requiring maintenance of the 20' Landscape Buffer Area along Rudy Lane by the Homeowner's Association.

14. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the _June, 21, 2007_ Planning Commission meeting.

15. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than $3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.

16. The signature entrance plan (if approved) shall be submitted to Planning Commission staff for review and approval prior to recording the record plat.

17. At construction approval, St. Matthews will require bond and inspection for both public and private roads. Private alleys are required to be constructed per public standards.

18. The applicant shall submit a landscape plan for review and approval by PDS staff for required plantings within the 20' LBA along Rudy Lane and for plantings within open space lot 1003. The number and type of plantings and the materials and appearance of the wall shall be substantially similar to those shown on the "Rudy Lane Buffer Exhibits A, B & C" and "Rudy Lane Open Space Exhibit" presented at the June 21, 2007 Planning Commission meeting.

LOCATION MAP
8453 KIRKWOOD GLEN