

# Planning Commission

## Staff Report

March 2, 2023



|                          |                                       |
|--------------------------|---------------------------------------|
| <b>Case No:</b>          | 22-ZONE-0149                          |
| <b>Project Name:</b>     | Pulte Cedar Creek Road Subdivision    |
| <b>Location:</b>         | 9220 & 9224 Cedar Creel Road          |
| <b>Owner(s):</b>         | Wendell E Thommasson Rev Living Trust |
| <b>Applicant:</b>        | Pulte Group                           |
| <b>Jurisdiction:</b>     | Louisville Metro                      |
| <b>Council District:</b> | 22 – Robin Engel, 23 – Jeff Hudson    |
| <b>Case Manager:</b>     | Dante St. Germain, AICP, Planner II   |

### REQUESTS

- **Change in zoning** from R-4 Single Family Residential to R-5 Single Family Residential
- **Waiver** from 7.3.30.E to permit a rear yard to overlap with a drainage easement by more than 15% (22-WAIVER-0223)
- **Major Preliminary Subdivision** (22-MSUB-0012)
- **Detailed District Development Plan** with Binding Elements

### CASE SUMMARY/BACKGROUND

The subject site is located on Cedar Creek Road across from the intersection with Fairmount Road, and consists of two parcels previously developed with a single-family home. The applicant proposes to rezone the site in order to construct a new 44-lot single-family subdivision. The residence currently on the property is not proposed to be retained.

Cedar Creek Road is a secondary collector and scenic corridor at this location. Single-family and large-lot single-family residential uses generally surround the site.

The site is located within the study area for the Fern Creek Small Area Plan. The site is located within Quadrant 3 (Southwestern Quadrant) and is within the Preservation Strategy Area where the rural, agricultural character should be maintained.

### STAFF FINDING

Staff finds that the proposal meets the guidelines of the Comprehensive Plan. The site plan meets the requirements of the Land Development Code with the exception of the requested waiver. The waiver is adequately justified and meets the standard of review.

### TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

Fern Creek Small Area Plan (2001)

MSD and Transportation Planning have provided preliminary approval of the proposal.

The Fern Creek Small Area Plan general recommendation for Quadrant 3 is to “preserve the existing rural residential and agricultural character of the southwestern quadrant while protecting the most significant natural resource in the quadrant, the Cedar Creek watershed. Such preservation would include strict regulation of the type and scale of development permitted in area.” Regulations regarding the type and scale of development permitted in the area were not adopted. Under “Guiding Principles” and Land Use, section 3.3.2, the plan states that the area in which this site is located “should be mostly low-density developments such as single-family residential, open space, and agricultural land uses.” Single-family residential land use is proposed for the site at this time. Section 8.2.2 addresses rural and agricultural land in this quadrant. An area-wide rezoning to downzone the area to R-R zoning was proposed. While there was an area-wide downzoning of other properties in the wider neighborhood, this site was not included, nor was any nearby site, and the subject site is currently R-4.

### **INTERESTED PARTY COMMENTS**

Five interested party comments were received by staff. One comment was in opposition to the request. The remainder were regarding a fence requested by an interested neighbor.

### **STANDARD OF REVIEW FOR REZONING**

Criteria for granting the proposed form district change/rezoning: *KRS Chapter 100.213*

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; **OR**
2. The existing form district/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 Plan 2040 which have substantially altered the basic character of the area.

### **STAFF ANALYSIS FOR CHANGE IN ZONING**

The site is located in the Neighborhood Form District

The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas.

The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages, incomes and abilities. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to, large lot single family developments with cul-de-sacs, traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero-lot line neighborhoods with open space, and high density multi-family housing.

The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycle and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to support physical activity for all users and invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets.

Following is staff's analysis of the proposed rezoning against the Goals, Objectives and Policies of Plan 2040.

The site is located in a developing area of the county, with single-family and large-lot single-family development located in the immediate vicinity. The proposal would permit smaller lots, increasing the amount and variety of housing in the neighborhood. The proposal would improve the connectivity of the neighborhood as well, providing a more direct public right-of-way connection between Cooper Chapel Road and Cedar Creek Road.

The proposed zoning district is generally in compliance with the plan elements and CHASE principles of Plan 2040. All other agency comments should be addressed to demonstrate compliance with the remaining Goals, Objectives and Policies of Plan 2040.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.E**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the overlap between the rear yard and the drainage easement is not likely to be visible outside the property or increase drainage off the property.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address overlap between required yards and drainage easements.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the overlap is made necessary by MSD generally requiring drainage easements to be in rear yards.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) 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.

STAFF: 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 by requiring excess rear yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP**

- (a) The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The site is mostly cleared and no natural resources are evident on the site. Required tree canopy will be provided.

- (b) The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: 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.

- (c) The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: No open space provisions are pertinent to the request.

- (d) 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;

STAFF: 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.

- (e) The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: 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 at a similar scale an intensity to existing development.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040 with the exception of the requested waiver.

## REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-4 to R-5
- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision**
- **APPROVE** or **DENY** the **Detailed District Development Plan** with **Binding Elements**

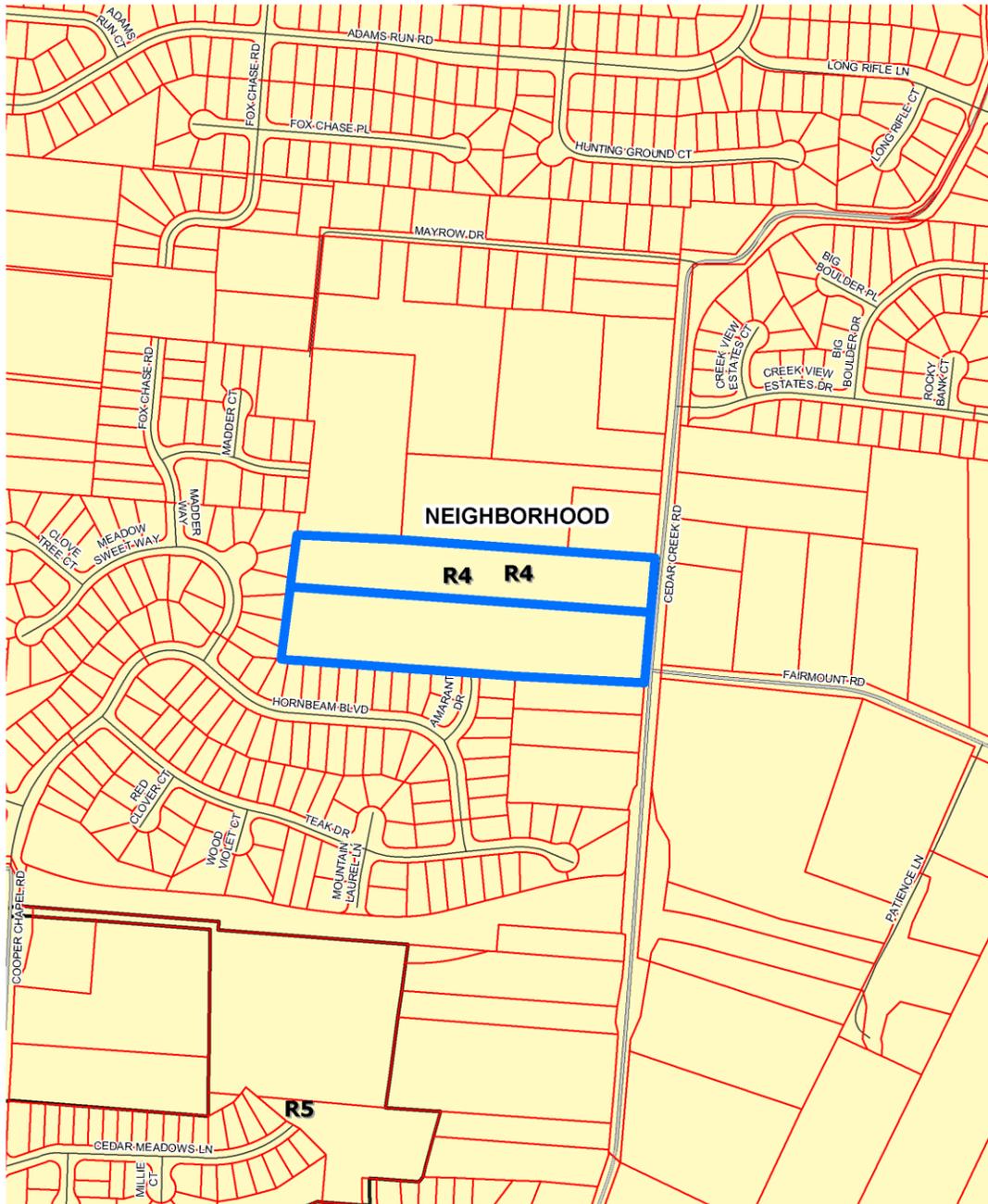
## NOTIFICATION

| Date              | Purpose of Notice   | Recipients   |
|-------------------|---------------------|--|
| <b>01/13/2023</b> | Hearing before LD&T | 1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents<br>Registered Neighborhood Groups in Council District 22 & 23 |
| <b>02/15/2023</b> | Hearing before PC   | 1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents<br>Registered Neighborhood Groups in Council District 22 & 23 |
| <b>02/13/2023</b> | Hearing before PC   | Sign Posting on property   |
| <b>02/19/2023</b> | Hearing before PC   | Legal Advertisement in the Courier-Journal   |

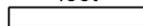
## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Staff Plan 2040 Checklist
4. Proposed Binding Elements

1. Zoning Map



9220 & 9224 Cedar Creek Rd  
feet



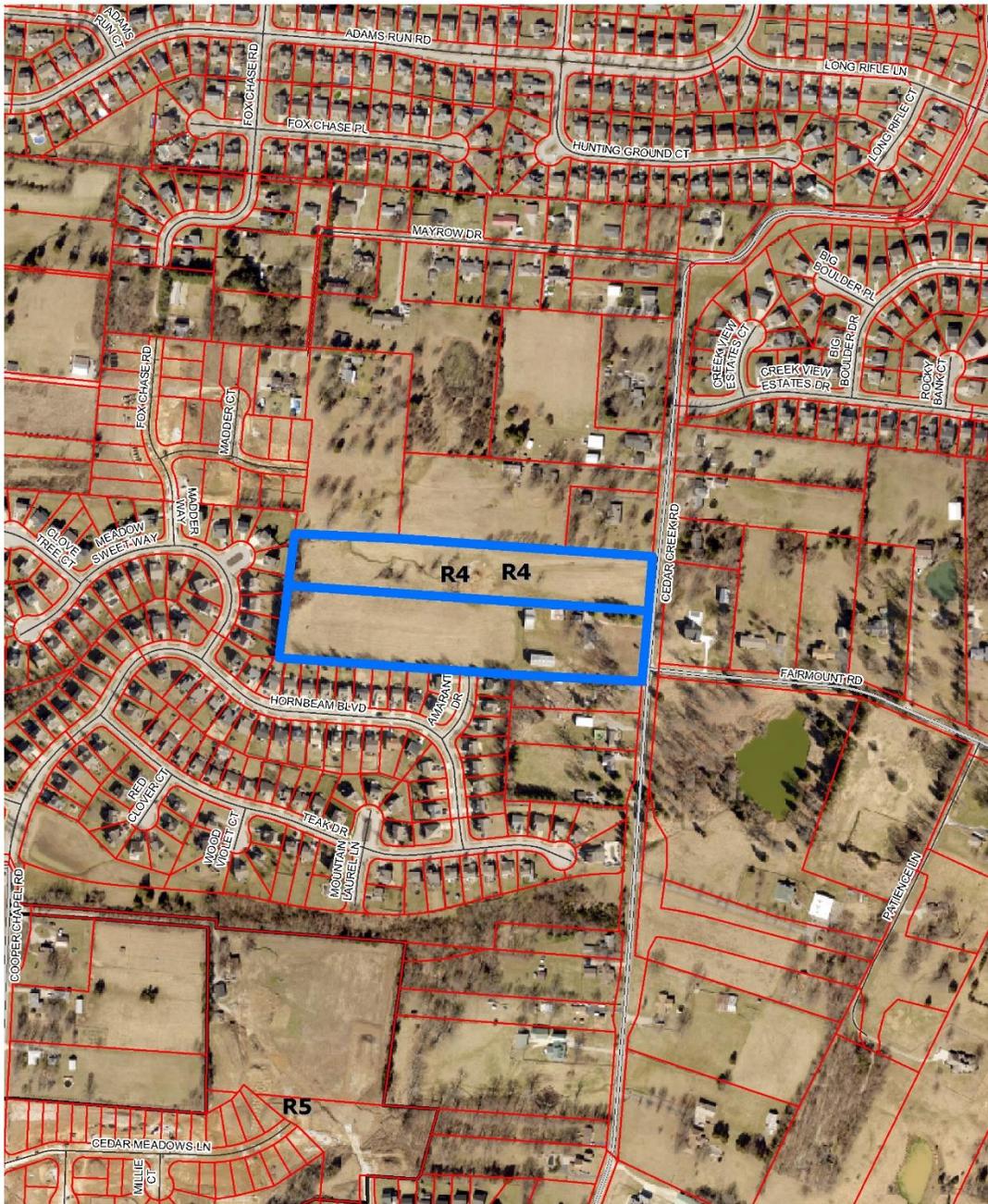
440

Map Created: 8/25/2022



Copyright (c) 2022, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

2. Aerial Photograph



9220 & 9224 Cedar Creek Rd

feet



440

Map Created: 8/25/2022



Copyright (c) 2022, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

### 3. Staff Plan 2040 Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

#### Neighborhood: Residential

| # | Plan 2040 Plan Element | Land Use & Development Policy   | Staff Finding | Staff Analysis  |
|---|------------------------|---|---------------|---|
| 1 | Community Form: Goal 1 | 7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.  | ✓             | The proposal is not for higher density or intensity use.  |
| 2 | Community Form: Goal 1 | 9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. | ✓             | The proposal is not substantially different in scale or intensity or density compared with the development around it. |
| 3 | Community Form: Goal 2 | 9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.  | ✓             | The proposal would permit new development providing residential uses.   |
| 4 | Community Form: Goal 3 | 10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.                | ✓             | No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site.                        |
| 5 | Community Form: Goal 4 | 2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.   | NA            | No distinctive cultural features are evident on the site.   |

| #  | Plan 2040 Plan Element | Land Use & Development Policy  | Staff Finding | Staff Analysis  |
|----|------------------------|--|---------------|---|
| 6  | Community Form: Goal 4 | 3. Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.   | NA            | No historic assets are evident on the site.   |
| 7  | Mobility: Goal 1       | 4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.   | ✓             | The proposal is not for higher density or intensity zoning.   |
| 8  | Mobility: Goal 2       | 4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.  | ✓             | Access to the development is through areas of similar intensity and density.  |
| 9  | Mobility: Goal 3       | 2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.   | ✓             | The site is easily accessible by bicycle and car. Access via transit, or by or people with disabilities may be improved by the redevelopment of the site. |
| 10 | Mobility: Goal 3       | 5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.  | ✓             | Transportation Planning has approved the proposal.  |
| 11 | Mobility: Goal 3       | 6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.  | ✓             | Transportation Planning has approved the proposal.  |
| 12 | Mobility: Goal 3       | 9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location. | ✓             | Transportation Planning has approved the proposal.  |

| #  | Plan 2040 Plan Element       | Land Use & Development Policy  | Staff Finding | Staff Analysis  |
|----|------------------------------|--|---------------|---|
| 13 | Mobility: Goal 3             | <b>10.</b> Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.   | ✓             | Transportation Planning has approved the proposal.  |
| 14 | Mobility: Goal 3             | <b>21.</b> Prevent safety hazards caused by direct residential access to high speed roadways.  | ✓             | No direct residential access to high speed roadways is proposed.                                |
| 15 | Community Facilities: Goal 2 | <b>1.</b> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.   | ✓             | The relevant utilities have approved the proposal.  |
| 16 | Community Facilities: Goal 2 | <b>2.</b> Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.   | ✓             | Louisville Water Company has approved the proposal.   |
| 17 | Community Facilities: Goal 2 | <b>3.</b> Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).   | ✓             | MSD has approved the proposal.  |
| 18 | Livability: Goal 1           | <b>5.</b> Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.   | ✓             | The site is largely cleared at this time and tree canopy will be provided with the development. |
| 19 | Livability: Goal 1           | <b>17.</b> Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project. | ✓             | No karst features are evident on the site.  |
| 20 | Livability: Goal 1           | <b>21.</b> Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.   | NA            | The site is not located in the regulatory floodplain.   |

| #  | Plan 2040 Plan Element | Land Use & Development Policy   | Staff Finding | Staff Analysis   |
|----|------------------------|---|---------------|--|
| 21 | Housing: Goal 1        | 1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.  | ✓             | The proposed zoning district would increase the variety of housing types in the neighborhood by permitting housing on smaller lots than is typical for the immediate vicinity.   |
| 22 | Housing: Goal 1        | 2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.  | ✓             | The proposal would support aging in place by providing smaller, lower-cost homes in an established neighborhood, thereby increasing housing choice for persons who may wish to remain in the neighborhood as they age. |
| 23 | Housing: Goal 2        | 1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.   | ✓             | The proposed zoning district would permit inter-generational mixed-income development. The site would be connected to the neighborhood and the surrounding area.   |
| 24 | Housing: Goal 2        | 2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.     | -             | The site is not located on or near a transit corridor.   |
| 25 | Housing: Goal 3        | 1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro. | ✓             | The proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs in the neighborhood, and within Louisville Metro.                              |
| 26 | Housing: Goal 3        | 2. As neighborhoods evolve, discourage displacement of existing residents from their community.   | ✓             | No existing residents would be displaced by the proposal.  |
| 27 | Housing: Goal 3        | 3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.  | ✓             | The proposal would permit accessory dwelling units.  |

#### 4. **Proposed 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. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Cedar Creek Road to provide a total of 40 feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit. If necessary, the dedication can be shown on the record plat.
  - c. 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.
  - d. 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.
  - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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. 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."

8. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
9. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
10. 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.
11. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for "Proposed Amaranth Drive". Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
12. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
13. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
14. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
  2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
  3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
15. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
16. The signature entrance shall be submitted to the Planning Commission staff for review and approval.