

**Planning Commission**  
**Staff Report**  
September 3, 2020



<b>Case No:</b>	20-ZONE-0006
<b>Project Name:</b>	Vogt Retail Development
<b>Location:</b>	4310 – 4318 Bardstown Road, 4403 – 4405 Fegenbush Lane
<b>Owner(s):</b>	John & Joyce Vogt, Sterling Trust Company
<b>Applicant:</b>	John & Joyce Vogt
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	2 – Barbara Shanklin
<b>Case Manager:</b>	Dante St. Germain, AICP, Planner II

**REQUESTS**

- **Change in form district** from Neighborhood to Suburban Marketplace Corridor
- **Change in zoning** from R-4 Single Family Residential to C-1 Commercial
- **Detailed District Development Plan** with Binding Elements

**CASE SUMMARY/BACKGROUND**

The subject site is located near the intersection of Bardstown Road and Fegenbush Lane. The property consists of 7 contiguous parcels. The applicant proposes to rezone the property to construct a new retail/restaurant/office development.

The property abuts Resthaven Memorial Cemetery to the east, with single-family uses to the south. Commercial uses are located to the west and north. The property is located in the Neighborhood form district, but is adjacent to Suburban Marketplace Corridor. The applicant proposes to change the form district of the property to Suburban Marketplace Corridor in order to match the zoning of the site to the form district. It is located in the study area for the Fern Creek Small Area Plan (Quadrant I).

**STAFF FINDING**

Staff finds that the proposal generally meets the guidelines of the Comprehensive Plan. The request meets the requirements of the Land Development Code.

**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 site is within Quadrant I of the study area for the Fern Creek Small Area Plan. No particular recommendations for this intersection were made in the plan.

## **INTERESTED PARTY COMMENTS**

No interested party comments have been received by staff.

## **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 applicant requests Suburban Marketplace Corridor Form District

Suburban Marketplace Corridors are generally located along major roadways with well-defined beginning and ending points and established depths along the length of the corridor. The pattern of development is distinguished by a mixture of medium-to high- intensity uses. Accommodations for transit users, bicyclists and pedestrians are encouraged in an effort to attract a variety of users as well as to minimize automobile dependency and traffic congestion. Transit-oriented development and park and ride facilities are encouraged to facilitate the creation of transit nodes throughout the community. Connectivity to nearby uses should be encouraged. Developers should be encouraged to design new commercial development in compact groups of buildings, which use the same curb cut, share parking, have a common freestanding sign identifying the uses and have a common buffering or streetscape plan with respect to any abutting uses of lower density or intensity. This form may include medium-to high-density residential uses that are designed to be compatible with both the non-residential uses along the corridor and the lower-density residential uses in adjacent Form Districts. Medium-density residential uses may serve as a transition area from lower-to higher-density residential uses and should be encouraged in this form.

Proposed new commercial uses are encouraged to locate within the boundaries of existing corridors. Reuse of locations within existing corridors is preferred over expansion of a corridor. Proposals to expand defined corridors represent significant policy decisions. When considering proposals that result in an extension of suburban marketplace corridors, particular emphasis should be placed on: (a) use or reuse of land within existing corridors; (b) potential for disruption of established residential neighborhoods; and (c) compliance with the site and community design standards of the Land Development Code.

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

The site is currently in the Neighborhood form district, but it is adjacent to Suburban Marketplace form district, and the applicant requests a form district change. The requested change to the form district appears to be appropriate given the site location and context, expanding the Suburban Marketplace form at the intersection.

The requested zoning change to C-1 also appears to be appropriate. The site is bounded on two sides by non-residential zoning. A cemetery and funeral home are located to the east, uses which are unlikely to change. The only residential zoning which is used residentially is located to the south,

where relatively large-lot single-family residential development is currently located. These lots would be appropriate for redevelopment in the future. Appropriate buffering is being provided at this time, to protect the current residential use, but future commercial or office use is likely on these lots.

The proposed zoning district and site plan are generally in compliance with the plan elements 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 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: No natural resources appear to exist on the site. The existing buildings are not proposed to be retained. However, the existing buildings do not appear to be historic sites.

- (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: There are no open space requirements pertinent to the current proposal.

- (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 compatible with the existing and future development of the area. Appropriate buffering is being provided to the existing residential uses to the south. However, those uses are likely to change in the future as the activity center at the intersection expands.

- (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 the Comprehensive Plan.

**REQUIRED ACTIONS**

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Form District** from NFD to SMCFD
- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-4 to C-1
- **APPROVE** or **DENY** the **Detailed District Development Plan** with **Binding Elements**

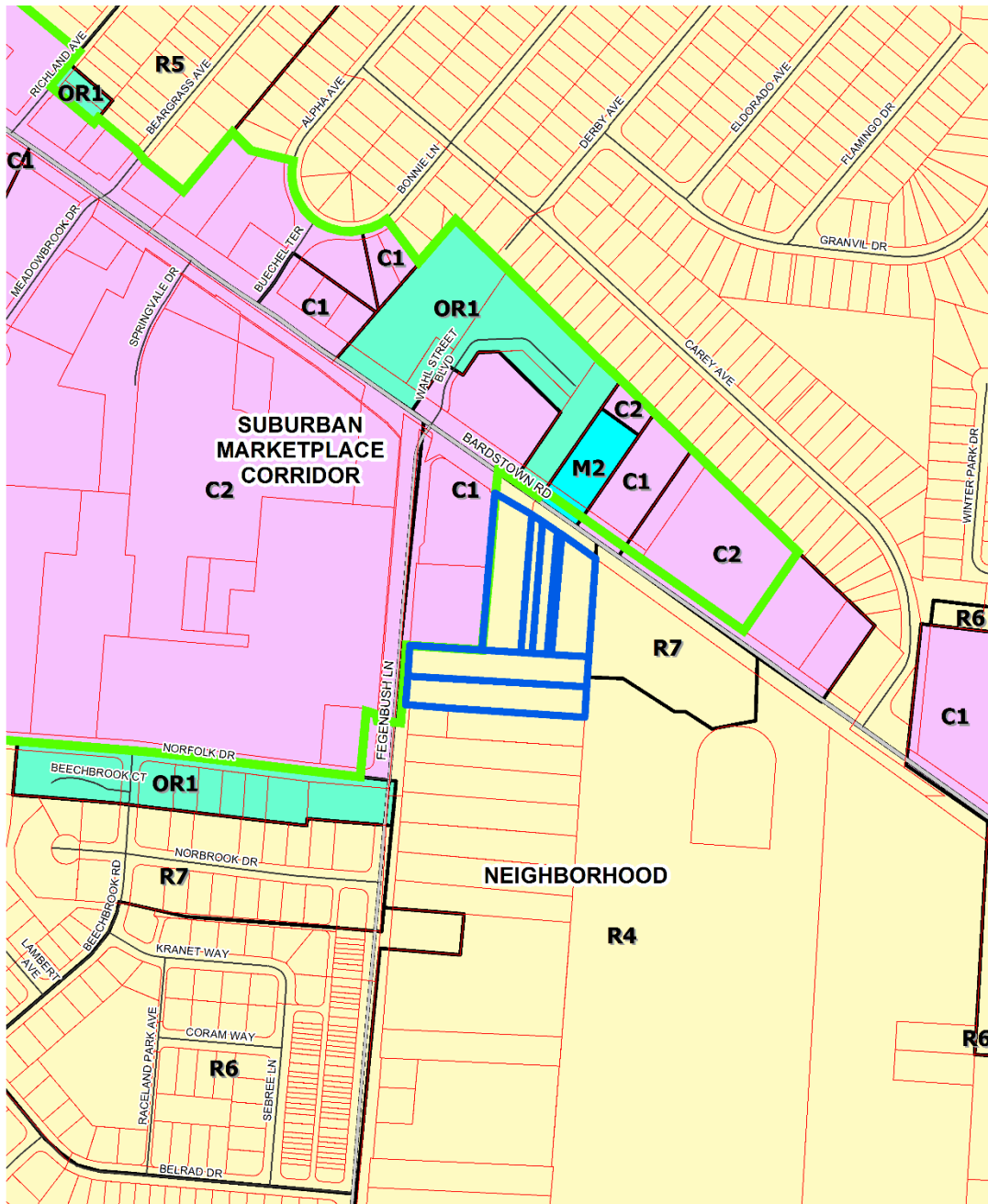
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>07/30/2020</b>	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
<b>08/18/2020</b>	Hearing before PC	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
<b>08/18/2020</b>	Hearing before PC	Sign Posting on property
<b>08/26/2020</b>	Hearing before PC	Legal Advertisement in the Courier-Journal

**ATTACHMENTS**

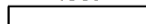
1. Zoning Map
2. Aerial Photograph
3. Staff Plan 2040 Checklist
4. Proposed Binding Elements

1. Zoning Map



19-ZONEPA-0082

feet



440

Map Created: 12/5/2019



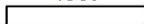
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2. Aerial Photograph



19-ZONEPA-0082

feet



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Map Created: 12/5/2019



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### 3. Staff Plan 2040 Checklist

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

#### Suburban Marketplace Corridor: Non-Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	<b>6.</b> Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The site is adjacent to an existing activity center and the proposal would not constitute a non-residential expansion into an existing residential area.
2	Community Form: Goal 1	<b>7.</b> 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 site is located adjacent to Bardstown Road, a transit corridor, and next to an existing activity center.
3	Community Form: Goal 1	<b>8.</b> Encourage industries to locate in workplace Form Districts or in areas readily served by infrastructure and transportation facilities, including transit, rather than isolated industrial sites.	NA	The proposal is not for industrial zoning.
4	Community Form: Goal 1	<b>15.</b> When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	✓	The proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
5	Community Form: Goal 1	<b>16.</b> Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	✓	The proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted.
6	Community Form: Goal 1	<b>17.</b> Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	The site is located near the intersection of Bardstown Road (a major arterial) and Fegenbush Lane (a minor arterial) and traffic will be routed along these roads.
7	Community Form: Goal 1	<b>18.</b> Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted.
8	Community Form: Goal 1	<b>21.</b> Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	NA	The proposal is not for industrial zoning and the proposed zoning district would not permit uses such as junkyards, landfills and quarries.
9	Community Form: Goal 2	<b>1.</b> Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The site is adjacent to an existing activity center and is in an appropriate location for the proposed uses.
10	Community Form: Goal 2	<b>5.</b> Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The site is adjacent to an existing marketplace corridor.
11	Community Form: Goal 2	<b>6.</b> Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposal would permit a more compact pattern of development in an existing activity center.
12	Community Form: Goal 2	<b>7.</b> Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposal would permit a mixture of compatible land uses in an existing activity center.



#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
13	Community Form: Goal 2	<b>8.</b> Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	The proposal would permit residential uses in the existing center.
14	Community Form: Goal 2	<b>9.</b> Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	-	The existing structures on the lots are not proposed to be preserved.
15	Community Form: Goal 2	<b>10.</b> Encourage outlot development in underutilized parking lots of existing development to promote utilization of existing infrastructure provided specific criteria for elements such as location, scale, signs, parking, lighting, and landscaping are met. Outlot development shall encourage street-level retail with residential units above.	✓	The proposal would not include any underutilized parking lots.
16	Community Form: Goal 3	<b>9.</b> Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	No natural systems are evident on the subject site.
17	Community Form: Goal 3	<b>10.</b> 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.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
18	Community Form: Goal 3	<p><b>11.</b> Encourage land uses within the Ohio River Corridor that are appropriate for and related to river corridor activities and that are consistent with the goals and objectives of the Ohio River Corridor Master Plan. Reserve appropriate riverfront sites such as the Upper River Road industrial area for river-related development. Allow development of commercial leisure businesses related to the river, such as boating services and restaurants in appropriate locations. Encourage new development in the Ohio River corridor and along key greenway and street connections to provide for public access in new riverfront development and to maintain views of the river from public rights-of-way.</p>	NA	The site is not located within the Ohio River Corridor.
19	Community Form: Goal 3	<p><b>12.</b> When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.</p>	✓	The site is not located in a flood-prone area. No karst features are evident on the site.
20	Community Form: Goal 4	<p><b>1.</b> Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.</p>	✓	No historic or architectural assets are evident on the site.
21	Community Form: Goal 4	<p><b>2.</b> Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.</p>	✓	No distinctive cultural features are evident on the site.
22	Mobility: Goal 1	<p><b>4.</b> 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.</p>	✓	The site is adjacent to an existing marketplace corridor. The applicant requests the appropriate Suburban Marketplace Corridor form district.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
23	Mobility: Goal 3	1. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposal would permit a mix of complementary neighborhood serving businesses.
24	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 proposal would permit a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people will disabilities.
25	Mobility: Goal 3	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments adjacent to an existing activity center.
26	Mobility: Goal 3	4. Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following: 4.1. nodal connections identified by Move Louisville; 4.2. impact on freight routes; 4.3. time of operation of facilities; 4.4. safety; 4.5. appropriate linkages between neighborhoods and employment; and 4.6. the potential for reducing travel times and vehicle miles traveled.	✓	Transportation Planning has approved the proposal.
27	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.
28	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.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
29	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.
30	Mobility: Goal 3	10. 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.
31	Community Facilities: Goal 2	1. 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.
32	Community Facilities: Goal 2	2. 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.
33	Community Facilities: Goal 2	3. 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.
34	Economic Development: Goal 1	2. Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	NA	The proposal is not for industrial zoning.
35	Economic Development: Goal 1	3. Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	The site is located on a major arterial street.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
36	Economic Development: Goal 1	4. Utilize industrial sites near the airport and the Ohio River to support the growth and development of uses whose infrastructure and production needs require such a location or for land uses that support airport-oriented or river-oriented industrial uses.	NA	The proposal is not for industrial zoning. The site is not located near the airport or the Ohio River.
37	Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	NA	The proposal is not for industrial zoning.
38	Livability: Goal 1	17. 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.
39	Livability: Goal 1	21. 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.
40	Livability: Goal 1	24. Ensure, to the extent feasible, that critical facilities and those that store or use hazardous wastes are located outside the regulatory floodplain. Where essential community facilities must be located within a floodplain (e.g., pumping stations), ensure that these facilities are designed, located and operated in a manner that minimizes loss of services during flood events as well as limits, to the extent possible, floodplain disturbance.	NA	The site is not located in the regulatory floodplain.
41	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 permitting higher density housing options on the site, or neighborhood-serving commercial uses in proximity to existing residential development.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
42	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area.
43	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 proposal would permit housing in proximity to Bardstown Road, a multi-modal transportation corridor.
44	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	-	The existing structures on the site are not proposed to be preserved, and existing residents may be displaced by the proposal.
45	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 innovative methods of housing.

#### 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. 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 in the Bardstown Road right-of-way.
  - c. A minor subdivision plat or other legal instrument shall be recorded creating the lot lines as shown on the development plan, dedicating additional right-of-way to Bardstown Road to provide a total of 65 feet from the centerline, and dedicating additional right-of-way to Fegenbush Lane to provide a total of 60 feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created for the new lots and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - e. 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.
  - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - g. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. 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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
  7. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
  8. 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.
  9. The Developer / Property Owner shall install a concrete boarding pad, bench pad and then notify TARC when the construction is complete. TARC will then install a standard bench. In addition, the Developer / Property Owner shall clean the stop as needed.
  10. Upon development or redevelopment of adjacent properties (currently McDonald's and National Express Car Wash), a unified access and circulation system shall be developed to eliminate

preexisting curb cuts and provide for vehicular movement throughout adjacent sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to Planning Commission legal counsel shall be recorded prior to the time of construction approval for the adjacent property to be developed.