

# Planning Commission Staff Report

October 21, 2021



<b>Case No:</b>	21-ZONE-0072
<b>Project Name:</b>	Thieneman 6212 Shepherdsville Rd
<b>Location:</b>	6212 Shepherdsville Road
<b>Owner(s):</b>	AL CAT, LLC
<b>Applicant:</b>	CL CAT, LLC
<b>Representative(s):</b>	Wyatt Tarrant & Combs, LLP – Jon Baker
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	2 – Barbara Shanklin
<b>Case Manager:</b>	Joel P. Dock, AICP, Planning Coordinator

## REQUEST(S)

- **Change-in-Zoning** from R-4 to C-M, commercial manufacturing
- **Parking Waiver** (Land Development Code, section 9.1.16) to exceed the maximum parking requirement of 9 spaces and allow for 27 spaces
- **District Development Plan**

## CASE SUMMARY

A commercial-manufacturing district is proposed to allow for the construction of a freestanding restaurant with drive-through. The originally submitted plan included tract 2 in the change in zoning request and warehousing was initially shown on that tract. During agency review, the development on tract 2 was removed from the current application and will be pursued later by the applicant. The requested area for the zoning change was reduced to include only the area of tract 1.

The site is located south of the intersection of Poplar Level Road with Shepherdsville Road, an arterial roadway. The subject site abuts C-M to the south and C-1 to the north. C-2 and PEC districts are opposite Shepherdsville Road from the site. Primary access is provided from Shepherdsville Road. Secondary access will be coordinated with adjacent properties owners and future development.

## STAFF FINDING

The proposed change in zoning is in conformance with the land use and development policies of Plan 2040. The proposed district is located along an arterial roadway with access to transportation facilities and transit corridors and located in the Workplace Form district. The proposed district will allow for a combination of light-industrial and retail goods and services to be offered in this area to support employment in nearby workplaces.

The applicant has also demonstrated in the parking study that the maximum parking permitted for this restaurant does not adequately accommodate parking during lunch-time hours. The parking waiver has been adequately justified for approval based on staff's analysis contained in the standard of review. The development plan is also justified.

## **STANDARD OF REVIEW FOR ZONING AND FORM DISTRICT CHANGES**

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 AND FORM DISTRICT**

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is in the Suburban Workplace Form District

Suburban Workplace is a form characterized by predominately industrial and office uses where the buildings are set back from the street in a landscaped setting. Suburban workplaces often contain a single large-scale use or a cluster of uses within a master planned development. New larger proposed industrial uses are encouraged to apply for a planned development district.

In order to provide adequate transportation access in suburban workplaces connected roads, public transportation and pedestrian facilities should be encouraged. Walkways to workplace-serving uses are encouraged for workplace employees. Development within suburban workplace form districts may need significant buffering from abutting uses.

The proposed district is located along an arterial roadway with access to transportation facilities and transit corridors. I-65 is located nearby to the west and the site is along a TARC route. Population is nearby to support land uses permitted within the district and the land use does not encroach upon residential areas. It is located within the Workplace form district adjacent to the neighborhood from where residential lands uses are present and the proposed zoning does not allow uses which create significant concerns of hazards, air, noise, or light pollutants.

The proposed district allows for a combination of light-industrial and retail which allows for goods and services to offered in areas to support employment in workplaces, which also supports shorter trips from nearby employers to goods. Pedestrian access and transit access are available, and housing is located nearby and outside the Workplace form. The current extent of the zoning change does not contain environmental features and no historic or cultural resources are present on the site of the zoning change.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR PARKING WAIVER**

- (a) The applicant made a good faith effort to provide as many parking spaces as possible on the site, on other property under the same ownership, or through joint use provisions.; and

STAFF: The applicant has provided the number of spaces they find will accommodate the proposed use on the subject site.

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

STAFF: Plan 2040 calls for development to accommodate all modes of transportation which the development will provide using sidewalks, pedestrian connections, and bike parking which aid the use of transit service in the area and public sidewalk network. The applicant has provided a parking study which demonstrates that the maximum requirements are insufficient in accommodating the real volume of parking needed for the proposed use. For similar facilities, the parking demanded for lunch-time hours ranges from 15-23 spaces, while the parking demanded for dinner-time ranges from 10-16 spaces.

Revisions to the parking standards were made in August of 2020. A second round of revisions heard at the Planning Commission on September 16, 2021 sought adjustments to the initial round of changes made in August 2020. These recent amendments would revise the maximum parking ratio to 1 space per 100 sq. ft. of gross floor area, which amounts to a total parking for the site maxed out at 21 spaces, which would not appear to accommodate the peak parking demanded and demonstrated by the applicant's parking study.

- (c) The requirements found in Table 9.1.3B do not allow the provision of the number of parking spaces needed to accommodate the parking needs of the proposed use and the requested increase is the minimum needed to do so

STAFF: The applicant has indicated in their parking study that the maximum requirements are insufficient in accommodating the real volume of parking needed for the proposed use. For similar facilities, the parking demanded for lunch-time hours ranges from 15-23 spaces, while the parking demanded for dinner-time ranges from 10-16 spaces. The applicant proposes 27 parking spaces.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR DETAILED DISTRICT DEVELOPMENT PLAN**

- 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 development site contains a protected waterway towards the rear in an area that is not being requested to be rezoned at this time but will need to be considered in the future as that area develops.

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

STAFF: The development will provide sidewalks, pedestrian connections, and bike parking to accommodate pedestrians and vehicular connectivity will be coordinated with adjacent owners.

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

STAFF: The development site contains a protected waterway towards the rear in an area that is not being requested to be rezoned at this time but will need to be considered in the future as that area develops.

- 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 drainage plan.

- 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 proposed plan is consistent with the area and the form districts pattern of development. The proposed use allows for a combination of services in an area to support employment in workplaces, which also supports shorter trips from nearby employers to goods and services. Pedestrian access and transit access are available, and housing is located nearby and outside the Workplace form.

- 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 is in conformance with Plan 2040 and the Land Development Code. The parking waiver has been adequately justified based on staff's analysis contained in the standard of review.

## **REQUIRED ACTIONS**

- **APPROVE or DENY the Change-in-Zoning** from R-4 to C-M, commercial manufacturing
- **APPROVE or DENY the Parking Waiver** (Land Development Code, section 9.1.16) to exceed the maximum parking requirement of 9 spaces and allow for 27 spaces
- **APPROVE or DENY the District Development Plan**

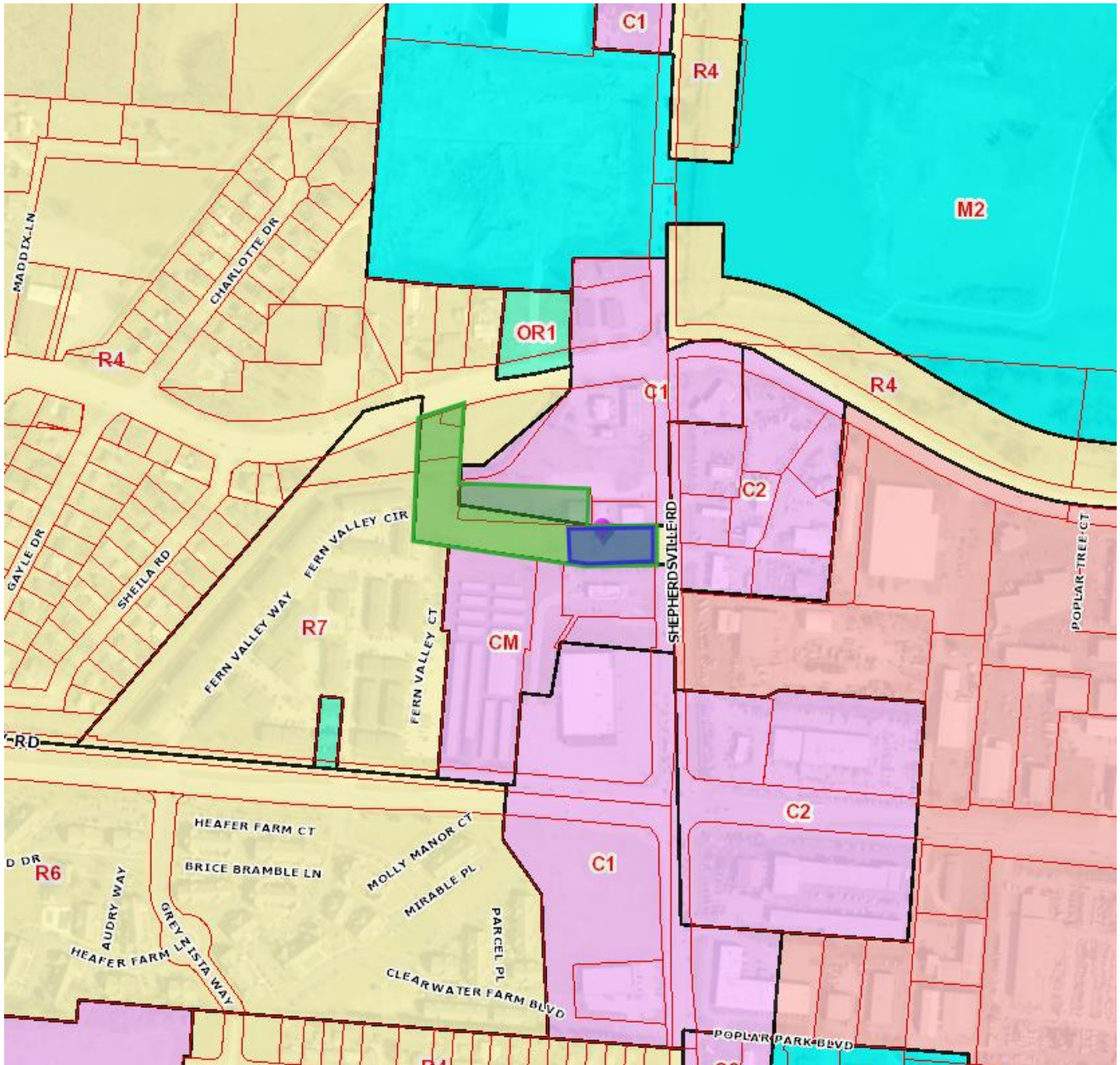
## **NOTIFICATION**

Date	Purpose of Notice	Recipients
9/17/21	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
10/8/21	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
9/28/21	Hearing before PC	Sign Posting on property
10/8/21	Hearing before PC	Legal Advertisement in the Courier-Journal

## **ATTACHMENTS**

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

1. **Zoning Map**





2. Aerial Photograph



### 3. Plan 2040 Staff Analysis

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

#### Suburban Workplace: Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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 proposed land use does not encroach upon residential areas as the site is located within the Workplace form district adjacent to the neighborhood form where residential lands uses are present.
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 proposed district is located along an arterial roadway with access to transportation facilities and transit corridors. I-65 is located nearby to the west and the site is along a TARC route. Population is nearby to support land uses permitted within the district.
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.	✓	The site is located within a workplace form and while the proposed use is not industrial itself, the district and context of industrial use is appropriately located.
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 proposed zoning does not allow uses which create significant concerns of hazards, air, noise, or light pollutants. Disadvantaged populations would not appear to be significantly impacted by increasing industrial land use in the workplace form.



Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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 proposed zoning does not allow uses which create significant concerns impacting quality of life. Disadvantaged populations would not appear to be significantly impacted by increasing industrial land use in the workplace form.
Community Form: Goal 1	<b>17.</b> Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	The site is located along an arterial roadway which is intended to serve larger volumes of traffic such as those that might be permitted by the proposed district.
Community Form: Goal 1	<b>18.</b> Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The proposed zoning does not allow uses which create significant concerns of hazards, air, noise, or light pollutants. Disadvantaged populations would not appear to be significantly impacted by increasing industrial land use in the workplace form.
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.	✓	The proposed district does not allow for hazardous uses.
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 proposed land use is appropriately located within the Workplace Form District.
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 district allows for a combination of light-industrial and retail which allows for goods to be sold in areas to support employment in workplaces.
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 proposed land use appears to be an efficient use of land to reuse a vacant site to provide supportive services to employees in the area.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 2	7. 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 proposed district allows for a combination of light-industrial and retail which allows for goods to be sold in areas to support employment in workplaces, which supports shorter trips from nearby employers to goods.
Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposed land use allows for a combination of light-industrial and retail which allows for goods to be sold in areas to support employment in workplaces,
Community Form: Goal 3	9. 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.	✓	The current extent of the zoning change does not contain environmental features
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.	✓	The current extent of the zoning change does not contain environmental features
Community Form: Goal 3	12. 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.	✓	The current extent of the zoning change does not contain environmental features
Community Form: Goal 4	1. 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.	✓	No historic or cultural resources are present on the site of the zoning change
Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	No historic or cultural resources are present on the site of the zoning change

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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 proposed land use allows for a combination of light-industrial and retail which allows for goods to be sold in areas to support employment in workplaces.
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 proposed land use allows for a combination of light-industrial and retail which allows for goods to be sold in areas to support employment in workplaces. Pedestrian access and transit access are available. Housing is located nearby.
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 proposed land use allows for a combination of light-industrial and retail which allows for goods to be sold in areas to support employment in workplaces. Pedestrian access and transit access are available. Housing is located nearby.
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.	✓	The development will have a limited impact on the transportation network as it is located on an arterial roadway with transit access.
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.	✓	Improvements will be made to make connections and improve connections for pedestrians along the right-of-way and internal to the site.
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.	✓	Improvements will be made to make connections and improve connections for pedestrians along the right-of-way and internal to the site.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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.	✓	The development site appears to an adequate supply of water for fire fighting purposes.
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).	✓	The development would appear to have adequate means of sewage treatment as it has received preliminary approval from MSD.
Economic Development: Goal 1	1. Limit land uses in workplace Form Districts to compatible uses that meet the needs of the industrial subdivision or workplace district and their employees.	✓	The site is located within a workplace form and while the proposed use is not industrial itself, the district and context of industrial use is appropriately located to support employment centers.
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.	✓	The proposed district is in the workplace form
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 proposed district is located along an arterial roadway with access to transportation facilities and transit corridors. I-65 is located nearby to the west and the site is along a a TARC route.
Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	✓	The proposed district is located along an arterial roadway with access to transportation facilities and transit corridors. I-65 is located nearby to the west and the site is along a a TARC route.
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.	✓	The area of the zoning change does not appear to contain environmentally sensitive features.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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.	✓	Impacts to the regulatory floodplain will be mitigated, as needed. MSD preliminary approval has been received.



#### **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 development on Tract 2 shall occur, unless developed in accordance with the Land Development Code. Prior to development (includes clearing and grading) of Tract 2, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements
3. 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 Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, Bureau of Highways.
  - c. A minor plat shall be recorded creating the lots as shown on the approved development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
  - d. 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.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between tracts 1 and 2, and with the adjoining property owners and recorded.
4. 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.
5. 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.
6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.