

Planning Commission Staff Report

September 2, 2021



Case No:	21-ZONE-0053
Project Name:	De Luna Villaflor Subdivision
Location:	3133 Bushmill Park
Owner(s):	Equity Trust Company
Applicant:	Brentwood Properties
Representative(s):	Miller-Wihry
Jurisdiction:	Louisville Metro
Council District:	17 – Marcus Winkler
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from R-6 to UN
- **Variance** from Land Development Code (LDC), section 5.3.1.C to reduce the side yard setback on both sides of the shared lot line between lots 1 & 2
- **Waiver** of LDC, section 7.8.60.B to allow less than 25' of frontage on a public or private street and more than 20 lots on a private street
- **Detailed District Development Plan** with Amendment to Record Subdivision Plat

CASE SUMMARY

The proposal will allow for the subdivision of the development site into 3 tracts of 3,200 sq. ft. each. An attached unit will be provided on each lot proposed. The site is located roughly ¼ mile south of Westport Road in a residential area on the west side of Freys Hill Road between N. Hurstbourne Parkway and I-265.

Twenty “innovative residential development” lots were initially approved and recorded along Bushmill Park in 1984. Several waivers specifically authorized by the innovative residential development standards were approved in Planning Commission docket 10-02-83, including lot area, yard, and setbacks. From the time of recording of the initial 20 lots through 2003, a series of minor subdivisions were approved, resulting in a current total of 59 lots along Bushmill Park. The innovative development regulations are no longer applicable and did not carry forward into the 1st edition of the Land Development Code in 2003. A zoning change, amendment to record plat, waivers, and variances are now necessary to create these lots and develop the site similarly to the neighborhood.

STAFF FINDING

The proposed change in zoning conforms to the land use and development policies of Plan 2040. The variance, waiver, and detailed plan with amendment to record plat have been adequately justified based on staff’s analysis contained in the standard of review. The district will allow for a continuation of the existing pattern of development which includes attached unit development.

STANDARD OF REVIEW FOR ZONING 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

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 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.

The proposed district allows for the continuation of housing options in an area that supports a variety of residential options. The proposed district allows for a variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities. The district will allow for a continuation of the existing pattern of development which includes attached unit development.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare as the setback does not impede the safe movement of pedestrians or vehicles or deprive adjacent property owners of access to maintain their properties.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the setback and attachment of homes is the pattern of development along the road frontage.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of pedestrians or vehicles deprive adjacent property owners of access to maintain their properties.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance allows development to occur which is consistent with the neighborhood.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or the same zone as the innovative subdivision regulations are not longer present in the land use regulations and the existing development was developed under those standards.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as it would deprive the applicant the ability to build homes consistent with adjacent development.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

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

STAFF: The waiver will not adversely affect adjacent property owners as the roadway pavement is 18' wide and the width of the lots are consistent with adjacent lots and home development.

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

STAFF: The waiver will not violate related guidelines of Plan 2040 as Mobility Goal 1, Policy 1. promotes healthy lifestyles and reduce congestion, new development and redevelopment should provide for the movement of pedestrians, bicyclists and transit users, where appropriate. The proposal will allow for development which is consistent with these goals and would allow for infill development that is contextual appropriate in this area that can be safely accessed.

- (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 innovation subdivision standards under which the existing development occurred is no longer available for application in the Land Development Code.

- (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: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as no individual would be capable of developing the few remaining infill lots consistently with the remainder of the neighborhood without the granting of this waiver.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED 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 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 will be conserved as the site is an infill lot that does not contain these sensitive features.

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

STAFF: Safe pedestrian and vehicular connectivity is being provided as required by the Land Development Code.

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

STAFF: The provision of sufficient open space (scenic and recreational) to meet the needs of the proposal will be provided by rear and front yards.

- 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 nearby development as the proposal provides for attached units consistently with the 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 proposed development plan conforms to Plan 2040 and generally conforms with the Land Development Code as the requested relief as been adequately justified to allow for development in an area where the standards applied to the evicting development are no longer available.

REQUIRED ACTIONS

- **RECOMMEND** to the Louisville Metro Council that the change in zoning from **Change-in-Zoning** from R-6 to UN on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE or DENY** the **Variance** from Land Development Code (LDC), section 5.3.1.C to reduce the side yard setback on both sides of the shared lot line between lots 1 & 2
- **APPROVE or DENY** the **Waiver** of LDC, section 7.8.60.B to allow less than 25' of frontage on a public or private street and more than 20 lots on a private street
- **APPROVE or DENY** the **Detailed District Development Plan** with Amendment to Record Subdivision Plat

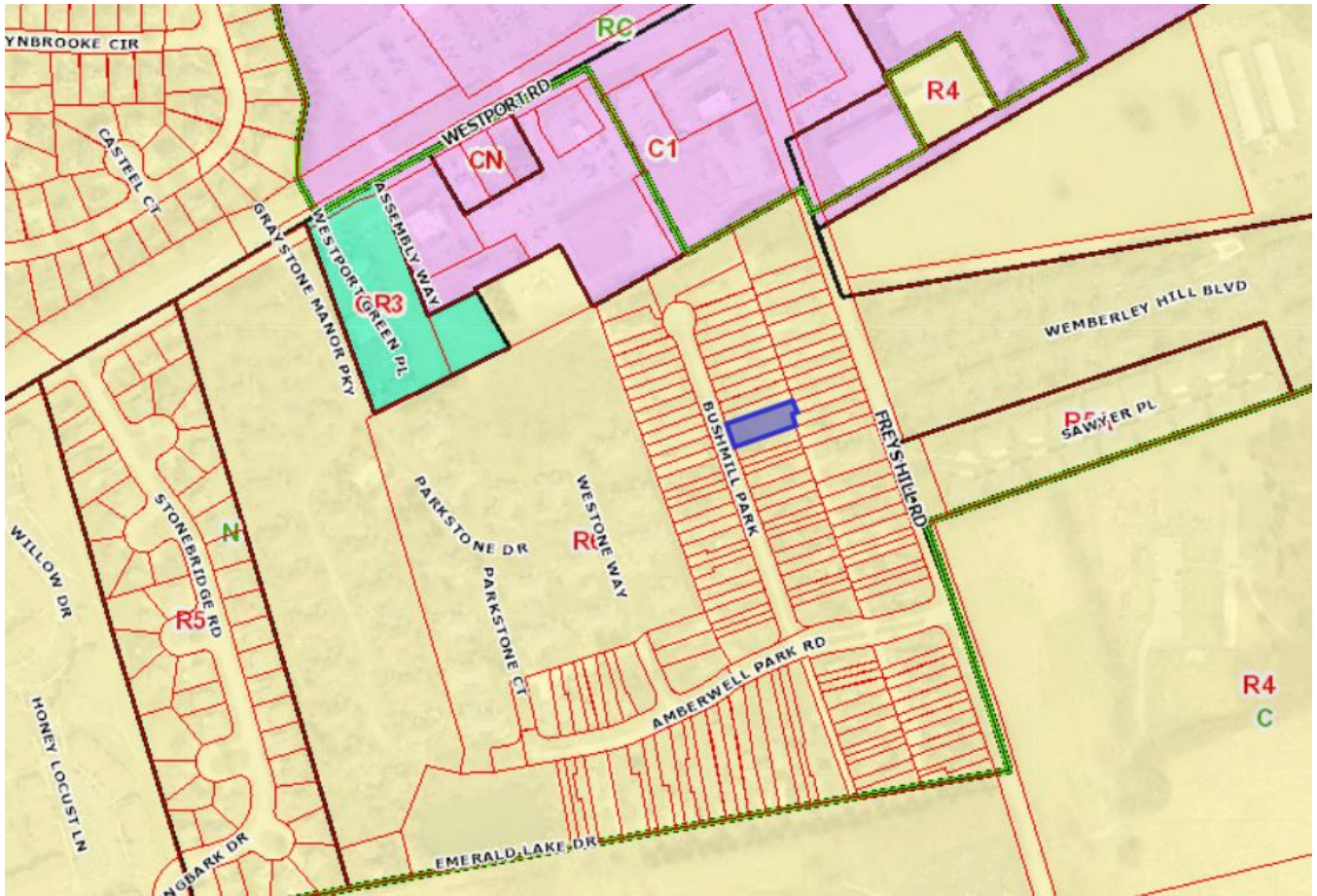
NOTIFICATION

Date	Purpose of Notice	Recipients
7/28	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 17
8/19/21	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 17
8/18	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

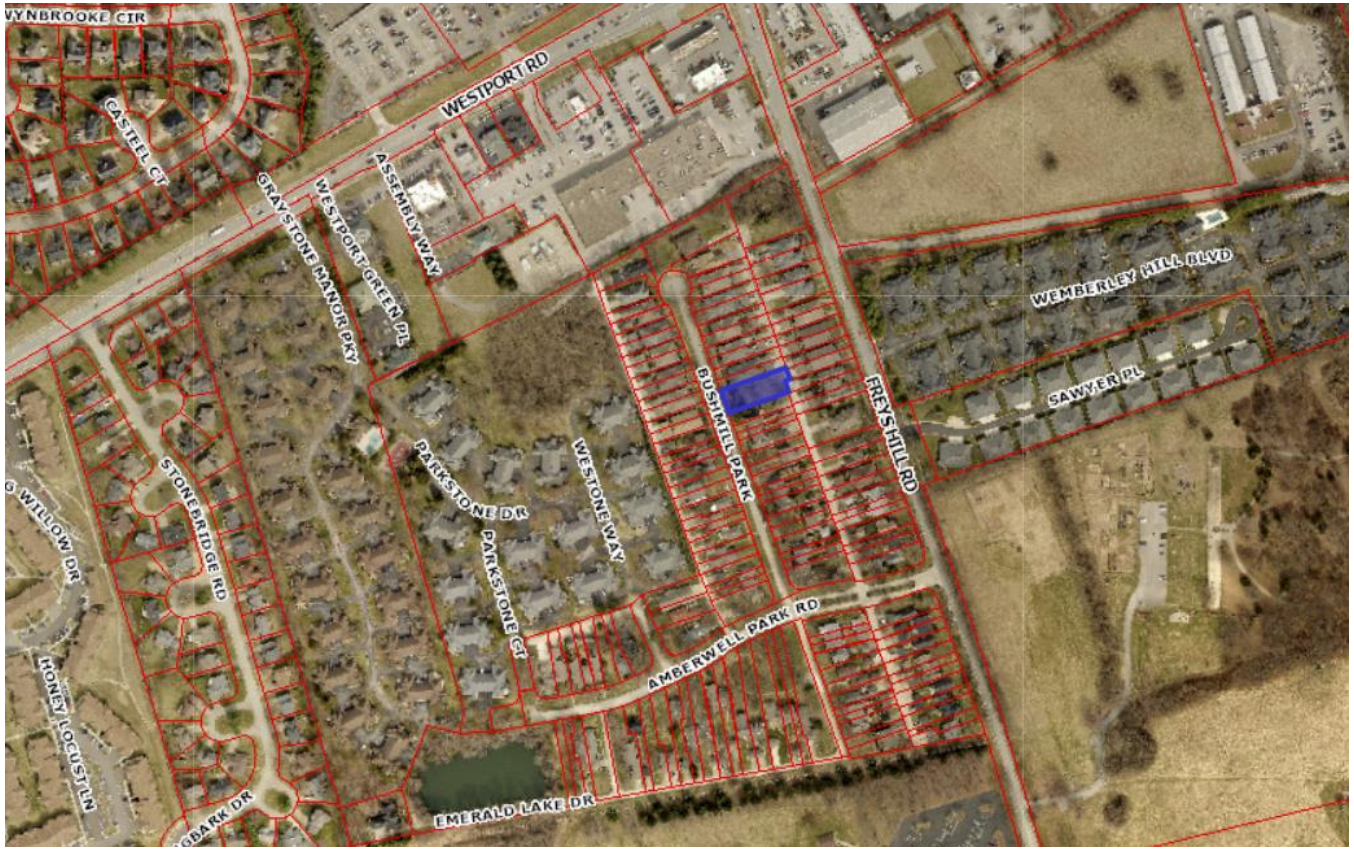
ATTACHMENTS

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

Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Land Use & Development Goal 1: Community Form	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 proposed district allows for a variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities
2	Land Use & Development Goal 1: Community Form	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.	✓	Appropriate transition between uses that are substantially different in scale and intensity or density of development are not necessary as adjacent uses are similar in density and scale and do not require transition.
3	Land Use & Development Goal 2: Community Form	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	Additional residential options are being provided in an area containing a wide variety of options.
4	Land Use & Development Goal 3: Community Form	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 site does not appear to contain any environmental constraints such as wet or highly permeable soils, severe, steep or unstable slopes/soils.
5	Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	The site does not contain distinctive cultural or natural features.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Land Use & Development Goal 4: Community Form	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.	✓	The site does not contain distinctive historic resources.
7	Land Use & Development Goal 1: Mobility	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 district allows for a variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities
8	Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access is available through areas of similar intensity to the subject site.
9	Land Use & Development Goal 3: Mobility	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 will include sidewalks to encourage land uses that are accessible.
10	Land Use & Development Goal 3: Mobility	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 no adverse impact on the transportation network.
11	Land Use & Development Goal 3: Mobility	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.	✓	The proposal will include sidewalks to encourage land uses that are accessible.
12	Land Use & Development Goal 3: Mobility	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.	✓	Existing transportation facilities in addition to the required sidewalks to be provisioned provide adequate service.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
13	Land Use & Development Goal 3: Mobility	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Existing transportation facilities in addition to the required sidewalks to be provisioned provide adequate service.
14	Land Use & Development Goal 3: Mobility	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No access to high speed roadways is proposed or provided.
15	Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Subject properties are served by existing utilities.
16	Land Use & Development Goal 2: Community Facilities	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.	✓	Subject properties are served by existing utilities, including water and sewage disposal.
17	Land Use & Development Goal 2: Community Facilities	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 has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as Metropolitan Sewer District MSD review and approval has been received.
18	Land Use & Development Goal 1: Livability	5. 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 does not contain unique characteristics as it is an infill lot within an existing development.
19	Land Use & Development Goal 1: Livability	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.	✓	Any hazard present, which there do not appear to be, will be mitigated as required by MSD or other agency responsible for the issuance of a building permit.
20	Land Use & Development Goal 1: Livability	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.	✓	No negative impacts to the floodplain are expected due to existing conditions.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
21	Land Use & Development Goal 1: Housing	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 district allows for a variety of housing styles and lotting patterns that support alternate forms and styles of housing adjacent to similar development that is within proximity to major transit, goods and services, and recreational amenities
22	Land Use & Development Goal 1: Housing	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 proposed district supports and promotes housing options and environments that support aging in place as the proposal provides another option to provision senior, affordable, or intergenerational housing.
23	Land Use & Development Goal 2: Housing	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposal allows for consistent redevelopment on an infill lot to encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.
24	Land Use & Development Goal 2: Housing	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 proposed district is located 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.
25	Land Use & Development Goal 3: Housing	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 proposed district allows for the continuation of housing options in an area that supports a variety of residential options. It encourages the provision of fair and affordable housing by allowing for a variety of ownership options and unit costs throughout Louisville Metro.
26	Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The proposed zoning district does not result in the displacement of residents.
27	Land Use & Development Goal 3: Housing	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 proposed district encourages a variety of housing types and occupancy types within the area to increase the production of fair and affordable 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. 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. A minor subdivision plat creating the lots as shown on the approved district development plan shall be recorded prior to issuance of any building permits, except that grading/clearing and foundation only permits may be issued to ensure the accuracy of property lines as they relate to common side walls for residential units. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
 - c. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the _____ Planning Commission public hearing. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
3. 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.
4. 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.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.