

Planning Commission

Staff Report

June 6, 2019



Case No:	19ZONE1011
Project Name:	Townfair Center Rezoning
Location:	1915 S Hurstbourne Parkway
Owner(s):	Hurstbourne Townfair Station LLC
Applicant:	Hurstbourne Townfair Station LLC
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from C-1 Commercial to C-2 Commercial
- **Removal of General Plan Binding Elements** from the subject site only
- **Detailed District Development Plan** with Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located at the intersection of S Hurstbourne Parkway and Bunsen Parkway, in the City of Forest Hills. It is the site of a vacant Walmart, with an existing commercial strip center to the south-west on a separate parcel. The applicant proposes to rezone the Walmart parcel from C-1 to C-2. The vacant structure is proposed to become an entertainment complex such as an indoor fun park with associated restaurant uses.

The site is already plan certain under docket 9-67-85. It was rezoned in 1985, from R-4 to C-1, along with the now-auto dealership located across Bunsen Parkway, which did not exist at the time of the rezoning. The auto dealership site was approved as C-2, and is currently C-2 today. General plan binding elements exist on the site from the original rezoning, which are proposed to be removed from the Walmart parcel. The general plan binding elements will continue to apply to the auto dealership site and the parcel that contains the strip center. New binding elements will apply to the Walmart site only.

STAFF FINDING

Staff finds that the proposal meets the guidelines of the Comprehensive Plan and requirements of the Land Development Code.

TECHNICAL REVIEW

Land Development Code (Louisville Metro)

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

INTERESTED PARTY COMMENTS

Staff received several phone calls from interested neighbors, mostly wanting to know what uses would be permitted in C-2 which are not permitted in C-1. A neighbor, Jim Lynch, sent a letter to staff to request additional binding elements.

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 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 and change in form district against the Goals, Objectives and Policies of Plan 2040.

The proposal is located in the Suburban Marketplace Corridor form with C-2 zoning and uses to both the north-east and south-west along S Hurstbourne Parkway. This site is unusual in that it is centrally located in the corridor but is zoned C-1 rather than the C-2 that is more common along the corridor. The proposed rezoning would allow the re-use of an existing, vacant building as an entertainment complex.

The site is located relatively close to the I-64 interchange, and regional traffic will be directed down S Hurstbourne Parkway, a major arterial, and then a short way down Bunsen Parkway, a primary collector, to the site. Traffic will therefore have a relatively minor impact on the adjacent neighborhoods. Landscaping to buffer the subject site from the adjacent neighborhoods already exists

and is proposed to be preserved, providing an appropriate transition between the site and nearby residents.

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: There do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

- (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 and the Kentucky Transportation Cabinet have 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 and land uses are compatible with the existing and future development of the area. The proposed site plan reuses an existing vacant building for an entertainment complex.

- (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 Comprehensive Plan and to requirements of the Land Development Code.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from C-1 to C-2
- **APPROVE** or **DENY** the **Removal of General Plan Binding Elements** from the subject site
- **APPROVE** or **DENY** the **Detailed District Development Plan with Binding Elements**

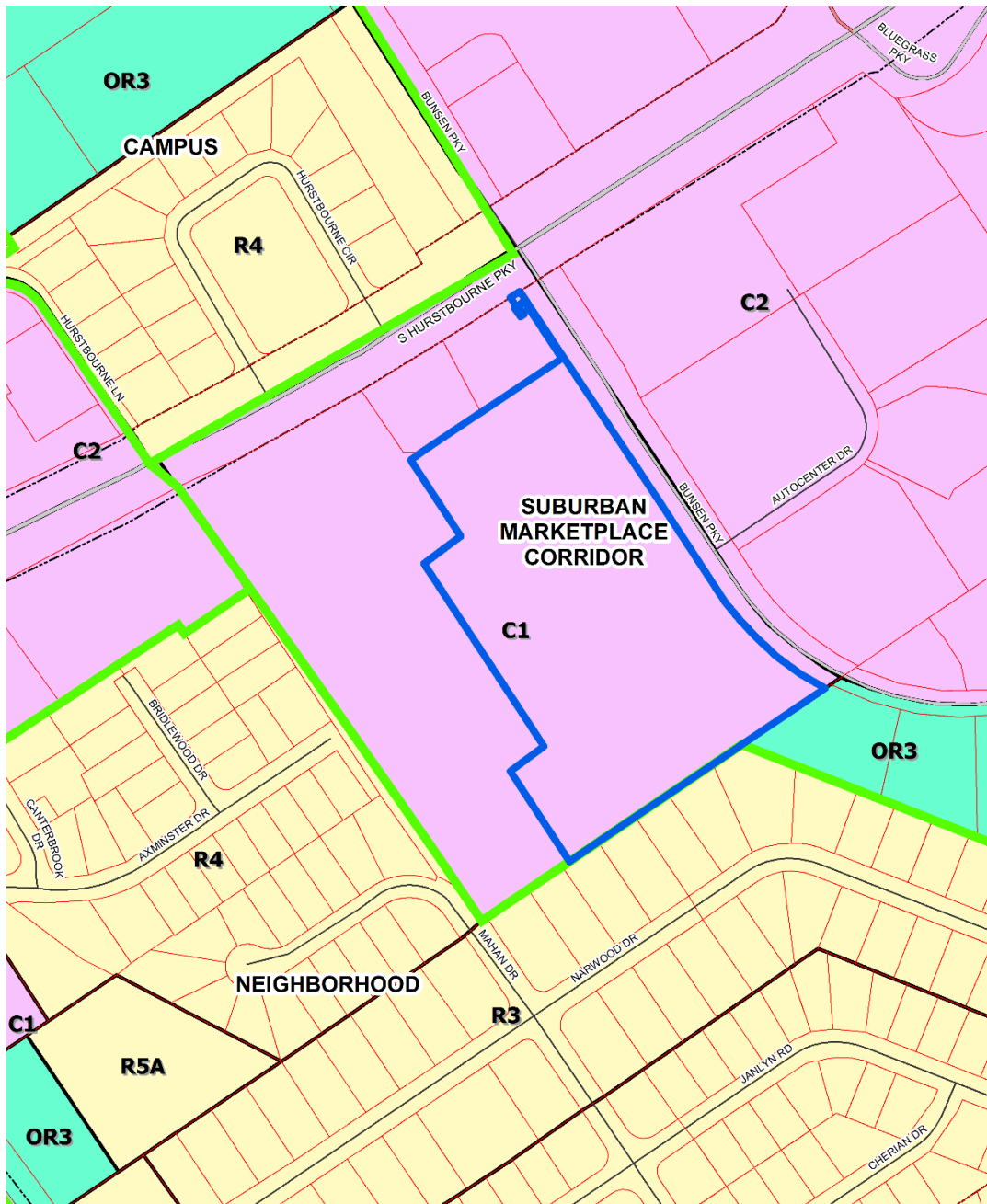
NOTIFICATION

Date	Purpose of Notice	Recipients
04/11/2019	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 18
05/17/2019	Hearing before PC	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 18
05/17/2019	Hearing before PC	Sign Posting on property
05/25/2019	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

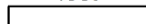
1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Checklist
4. General Plan Binding Elements (proposed to be removed)
5. Proposed Binding Elements

1. Zoning Map



1915 S Hurstbourne Parkway

feet



290

Map Created: 5/24/2019



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2. Aerial Photograph



1915 S Hurstbourne Parkway

feet



290

Map Created: 5/24/2019



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3. 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	Land Use & Development Goal 1: Community Form	6. 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 subject site is already zoned commercially and the proposed zoning district would increase the potential commercial uses. The proposed zoning district change would not expand the commercial use into a non-residential area.
2	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 subject site is located on a transit corridor and a major arterial road. The proposed zoning district is a higher density and intensity district.
3	Land Use & Development Goal 1: Community Form	8. 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	Land Use & Development Goal 1: Community Form	15. 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 district change would allow for higher intensity commercial uses than the uses currently allowed. The subject site is not located in a historically disadvantaged area.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
5	Land Use & Development Goal 1: Community Form	16. 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 commercial zoning would permit higher density and intensity uses than currently permitted under the existing commercial zone. The subject site is not located in an area that is historically disproportionately affected by adverse impacts.
6	Land Use & Development Goal 1: Community Form	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	Traffic for the uses allowed under the proposed zoning would be similar to the traffic currently generated by the uses allowed by the existing zone. Traffic will be routed to S Hurstbourne Parkway, a major arterial, or Bunsen Parkway, a primary collector.
7	Land Use & Development Goal 1: Community Form	18. Mitigate adverse impacts of noise from proposed development on existing communities.	✓	Noise from the site must comply with Louisville Metro Ordinances.
8	Land Use & Development Goal 1: Community Form	21. 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 zoning district would not permit junkyards, landfills, quarries, or similar uses.
9	Land Use & Development Goal 2: Community Form	1. 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 zoning district change would allow for an increased intensity of use on the subject site, which is located in an activity center.
10	Land Use & Development Goal 2: Community Form	5. Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The subject site is located in an activity center, and is currently being used partially for retail uses. The existing retail uses can be anticipated to continue indefinitely.
11	Land Use & Development Goal 2: Community Form	6. Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposed zoning district change would increase the intensity of permitted uses on property that is currently already used commercially, resulting in a more compact and efficient land use pattern in an existing activity center.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Land Use & Development Goal 2: Community Form	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 zoning district change would permit a broader mix of uses than is currently allowed under the existing zone.
13	Land Use & Development Goal 2: Community Form	8. Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	The proposed zoning district would allow for a mix of residential and retail or office uses.
14	Land Use & Development Goal 2: Community Form	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would reuse existing structures.
15	Land Use & Development Goal 2: Community Form	10. 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 existing development has two outlots developed as restaurants.
16	Land Use & Development Goal 3: Community Form	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.	✓	No natural features are evident on the subject site.
17	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.	✓	No wet or highly permeable soils, or severe, steep or unstable slopes appear to exist on the subject site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
18	Land Use & Development Goal 3: Community Form	<p>11. 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 subject site is not located in the Ohio River Corridor.
19	Land Use & Development Goal 3: Community Form	<p>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.</p>	✓	The subject site is not located in a flood-prone area or an area vulnerable to sinkholes or landslides.
20	Land Use & Development Goal 4: Community Form	<p>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.</p>	✓	No historic assets are evident on the subject site.
21	Land Use & Development Goal 4: Community Form	<p>2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.</p>	✓	No landscapes or natural elements are evident on the subject site. The built features as currently exist are proposed to remain.
22	Land Use & Development Goal 1: Mobility	<p>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.</p>	✓	The proposed zoning district is for a higher density and intensity district. The subject site is located within an existing marketplace corridor, an existing activity center, and an employment center.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
23	Land Use & Development Goal 3: Mobility	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 subject site is not located in a neighborhood or village center.
24	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 proposed zoning district would allow for a mix of compatible land uses and traffic will be directed down a major arterial road. Housing exists near the existing center.
25	Land Use & Development Goal 3: Mobility	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.	✓	Two transit stops are located near the subject site. The existing transit stops will reduce the need for multiple automobile trips.
26	Land Use & Development Goal 3: Mobility	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.	✓	The subject site is near two existing transit stops and sidewalks are available to assist pedestrians and users of transit in utilizing the site.
27	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.	✓	Transportation Planning has approved the proposal.
28	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.	✓	Transportation Planning has approved the proposal.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
29	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.	✓	Transportation Planning has approved the proposal.
30	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.	✓	Transportation Planning has approved the proposal.
31	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.	✓	The relevant utilities have approved the proposal.
32	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.	✓	Louisville Water Company has approved the proposal.
33	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).	✓	MSD has approved the proposal.
34	Land Use & Development Goal 1: Economic Development	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	Land Use & Development Goal 1: Economic Development	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 subject site is located on a major arterial street.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
36	Land Use & Development Goal 1: Economic Development	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.
37	Land Use & Development Goal 1: Economic Development	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	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.	✓	The subject site is located on karst topography. No karst features were located on the site.
39	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.	✓	The subject site is not located in the regulatory floodplain.
40	Land Use & Development Goal 1: Livability	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.	✓	The subject site is not located in the regulatory floodplain.
41	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 zoning district would allow for residential or commercial development that would support aging in place for nearby residents.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
42	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 proposed zoning district would allow for mixed-income and mixed-use development.
43	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 subject site is located on a major arterial road with two transit stops nearby. The proposed zoning district change would permit high density residential development in the future. The proposed zoning district change would also permit more amenities close to the existing residential neighborhoods abutting the development site.
44	Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The subject site is not residential in nature and increasing the intensity of allowed uses would not displaced any existing residents.
45	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 zoning district would allow innovative methods of housing to be developed.

4. General Plan Binding Elements (proposed to be removed)

- ~~1. Prior to development of each phase of the project, a detailed district development plan shall be submitted to the Planning Commission for approval. The plan shall be in adequate detail for the Commission to assess the impact of the development in the surrounding area. Each development plan shall be subject to additional binding elements.~~
- ~~2. The gross square footage for the portion of the development southwardly of the proposed road bisecting the property shall be 235,685 square feet including no more than 10,785 square feet for out parcels one and two. The total square footage for the portion of the property lying northwardly of the proposed road bisecting the property shall be 146,500 square feet.~~
- ~~3. No additional development or expansion shall take place unless additional parking is provided.~~
- ~~4. Any change in use of the building space shall receive certificate of occupancy permits only if no great deficit in parking is created.~~
- ~~5. Before a building permit is issued:

 - ~~a) The development plan must be reapproved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.~~
 - ~~b) The property owners or developers must obtain approval from the Planning Commission, in business session, of a screening, buffering and landscaping plan for the site.~~~~

Landscape along Hurstbourne Parkway shall include berms, and sufficient plantings to establish a "parkway character" in the area zoned C-1 and sufficient plantings to establish a compatible "parkway character" in the area zoned C-2. The buffer to be constructed along the southwest and southeast property lines shall provide a substantial and solid barrier between the residential uses to the south and the commercial uses on the site.

6. ~~There shall be no direct access to Hurstbourne Lane except as shown on the approved district development plan. Primary access will be via the new public street constructed to serve this site.~~
7. ~~The developer shall construct and dedicate to public use the roadway shown on the approved district development plan and preliminary subdivision plan (Docket 10-5-85) prior to occupancy of any structure on this site.~~
8. ~~Off-site traffic improvements shown on the approved district development plan shall be constructed prior to occupancy of any structure on this site.~~
9. ~~No freestanding signs shall be erected until a plan showing their location, height, and size has been submitted to and approved by the Planning Commission.~~
10. ~~The screening (buffering/landscaping) shown on the approved district development plan shall be implemented prior to occupancy and maintained thereafter. Detailed planting plans shall be submitted prior to construction.~~
11. ~~If a building permit is not issued within one year of the date of approval of the plan or rezoning, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.~~
12. ~~A certificate of occupancy must be received from the appropriate code enforcement office 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.~~
13. ~~The applicant guarantees payment of the cost of constructing the portion of the proposed new roadway crossing the first tract located easterly of the subject property as shown on Sheet 2 of the proposed road plan entitled "Preliminary Council Crest Drive Extension from Bunsen Way to Hurstbourne Lane" that is part of the record in this case. Payment of such cost will be paid as construction of that portion of the proposed new roadway progresses.~~
14. ~~On the portion of the subject property located northerly of the proposed new road that divides the subject property, that is the auto sales part, the applicant will not place pennants nor will the applicant utilize outdoor loud speakers in connection with the auto sales agencies.~~
15. ~~The following uses are prohibited on the portion of the subject property located southerly of the proposed new road that divides the subject property:~~
 - a) ~~Restaurants of the type known as "fast food" restaurants, characterized by freestanding buildings with drive-in facilities or drive-through windows to allow food and drink to be sold outside the building. This restriction shall not prohibit a café with sidewalk seating used in conjunction with indoor food service nor shall it prohibit a food court located within the shopping center where food may be served by a variety of vendors~~
 - b) ~~Automobile service stations~~

- ~~c) Beer depots~~
- ~~d) Bowling alleys~~
- ~~e) Business schools, but not to be construed to prevent teaching activities related to the products sold in retail stores~~
- ~~f) Car washes~~
- ~~g) Exceptional residential uses~~
- ~~h) Funeral homes~~
- ~~i) Retail nurseries, but this restriction is not intended to prohibit the sale of items such as potted plants in connection with a florist shop~~
- ~~j) Towers (radio/TV receiving or transmitting)~~

~~16. A landscaping plan must be submitted for approval by the full Commission in business session which meets Article 12.~~

~~17. The above binding elements may be amended as provided for in the Zoning District Regulations.~~

5. 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.
 - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners 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.

5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
6. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
7. 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.
8. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed .5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.