

Planning Commission
Staff Report
September 3, 2020



Case No:	17ZONE1030
Project Name:	Chathamwood Apartment Homes
Location:	5200, 5204, 5208 Chathamwood Ct.
Owner(s):	Chathamwood LLC
Applicant:	Chathamwood LLC
Jurisdiction:	Louisville Metro
Council District:	23-James Peden
Case Manager:	Julia Williams, AICP, Planning Supervisor

REQUEST(S)

- Change in zoning from R-4 to R-6
- Variance from Chapter 4.8.3.C to reduce the 100' stream buffer to 25' (75' Variance) 20-VARIANCE-0041
- Waiver from 10.2.4 to permit encroachments into the 15' LBA as indicated on the development plan 20-WAIVER-0033
- Detailed District Development plan

CASE SUMMARY/BACKGROUND

The applicant is proposing 24 multi-family units on a 1.92 acre vacant lot located in southcentral Jefferson County, approximately 1 mile south of I-265. The proposal will have one access point from Charleswood Road, a local road, and 36 associated parking spaces. Fishpool Creek runs along the south side of the property. The property was originally subdivided as part of the Charleswood Village Subdivision (PB 21 Page 99) where the lots were labeled as "Sewage Treatment Plant".

STAFF FINDING

Staff finds that the proposal does not meet the guidelines of the Comprehensive Plan and requirements of the Land Development Code due to the significant encroachments into the stream buffer.

TECHNICAL REVIEW

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

Staff received a phone call in opposition with concerns about traffic and people looking into private homes backyards.

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

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

The site is located in the Neighborhood Form District

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.

Fishpool Creek runs along the southside of the property. The 25' streamside buffer is left undisturbed while the 50' middle and 25' outer buffers are being encroached upon by development. The proposed high density zoning is not located near or along a marketplace corridor. The site is located in the vicinity of office and commercial zoning, which could be a future activity center. The site is not served by transit. More than half of the middle and outer stream buffers are encroached upon by building or pavement. No mitigation is proposed for the encroachments.

The proposed high density zoning that is not located near transportation facilities, employment centers, or an existing activity center. However there is OR and C-1 zoning located nearby that could potentially be developed non-residentially and become an activity center.

The landscape buffers are provided where the site is adjacent to residential zoning. With the exception to the west, the site is surrounded by open space lots. The area has mixed zoning in the vicinity, therefore access to the development will not be through significantly lower density/intensity of development. This proposal adds to the diversity of housing options in this area, which is dominated by single family housing.

All other agency comments should be addressed to demonstrate compliance with the remaining Guidelines 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 VARIANCE

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

STAFF: The variance will adversely affect the public health, safety or welfare because the required buffer is intended to preserve and enhance the biological, hydrological and ecological functions of the creek. To protect natural areas and features, minimize water pollution, and to locate development in areas that do not have severe environmental limitations.

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

STAFF: The requested variance will alter the essential character of the general vicinity because the site is surrounded by open space lots within subdivisions. The proposed lot was intended as a sewage treatment site with very little impact on the surrounding landscape.

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

STAFF: The requested variance will cause a hazard or nuisance to the public because the full buffer for the creek is not being mitigated.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations because the encroachments into the buffer are not being mitigated.

ADDITIONAL CONSIDERATIONS:

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

STAFF: The requested variance does not arise from any special circumstances. The applicant is encroaching with building and pavement in almost the entirety of the middle and outer stream buffers.

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 not create an unnecessary hardship on the applicant because the site is not undevelopable under the existing zoning and associated regulations.

3. The circumstances are 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 the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is seeking additional development on the site for which it is not zoned, causing the encroachments into the buffers.

ADDITIONAL CHAPTER 4.8.4.B CRITERIA

- a. The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area.

STAFF: The stream buffer requirements do not represent an extreme hardship that there would be minimal or no economic use of the property because the site could be developed under the current zoning.

- b. The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without encroaching into the required Buffer Area.
- c. STAFF: It is possible to construct a single family dwelling without encroachments into the stream buffer.
- d. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.

STAFF: Encroachment into the required Buffer Area is limited to the minimum necessary to accommodate the proposed use once the zoning has changed on the property. Without the change in zoning the encroachments are not necessary.

- e. The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction.

STAFF: The applicant has not offered any mitigation measures to offset the impacts of the encroachments other than treating the first 1" of rainwater prior to it entering Fishpool Creek.

- f. Approval of the variance will not result in a reduction in water quality.

STAFF: MSD has not indicated a reduction in water quality as the 25' MSD streamside buffer is in compliance with their standards.

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 since the applicant has indicated that all buffer and screening requirements will be met within the buffers.

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

STAFF: Plan 2040 calls for protection of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate, appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances, that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered and ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The applicant has indicated that all buffer and screening requirements will be met within the buffers.

- (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 since the applicant has indicated that all buffer and screening requirements will be met within the buffers.

- (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 deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the applicant has indicated that all buffer and screening requirements will be met within the buffers.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDP

- 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: Natural resources on the site are not being conserved as the encroachments into the middle and outer buffers for Fishpool Creek are not being observed.

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan.

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

STAFF: Open space meets Land Development Code requirements.

- 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 not compatible with the existing and future development of the area. Non-compliance with the stream buffer and the over 50% encroachment into the buffers indicate an overdevelopment of the site.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code.

STAFF: The development plan does not conform to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

REQUIRED ACTIONS:

- **RECOMMEND** that the Louisville Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-4 to R-6
- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Waiver**
- **APPROVED** or **DENY** the **Detailed District Development Plan**

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal is in conformance with the Comprehensive Plan; OR the existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR if 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.

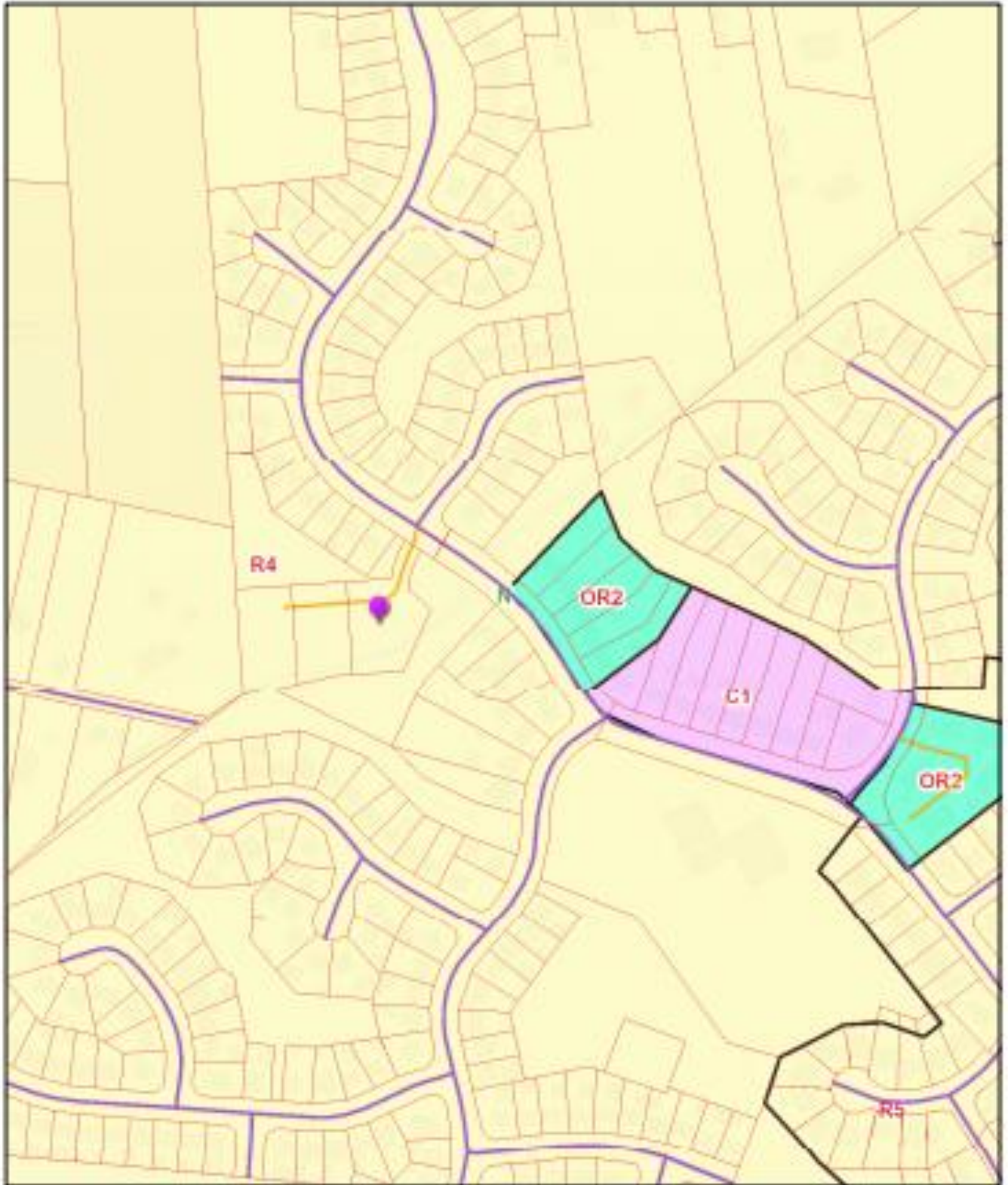
NOTIFICATION

Date	Purpose of Notice	Recipients
7/29/20	Hearing before LD&T 8/13/20	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 23
8/19/20	Hearing before PC on 9/3/20	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 23
8/18/20	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

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

1. Zoning Map



3. Staff Plan 2040 Checklist

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

Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposed high density zoning that is not located near transportation facilities, employment centers, or an existing activity center. However there is OR and C-1 zoning located nearby that could potentially be developed non-residentially and become an activity center.
2	Community Form: Goal 1	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	✓	The landscape buffers are provided where the site is adjacent to residential zoning. With the exception to the west, the site is surrounded by open space lots.
3	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	-	The proposal is not for mixed use.
4	Community Form: Goal 3	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	Soils are not an issue with the development.
5	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	-	Fishpool Creek runs along the southside of the property. The 25' streamside buffer is left undisturbed while the 50' middle and 25' outer buffers are being encroached upon by development.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Community Form: Goal 4	3. Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.	✓	The site has no historic or cultural value.
7	Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	-	The proposed high density zoning is not located near or along a marketplace corridor. The site is located in the vicinity of office and commercial zoning, which could be a future activity center. The site is not served by transit.
8	Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	The area has mixed zoning in the vicinity, therefore access to the development will not be through significantly lower density/intensity of development.
9	Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	-	The area has mixed zoning in the vicinity. Should the office and commercial zoned areas develop for the uses permitted, vehicle miles traveled would be reduced. The proposal is for housing not located near an employment center.
10	Mobility: Goal 3	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	Transportation Planning has not indicated that the proposal will have a negative effect on the surrounding transportation network.
11	Mobility: Goal 3	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Transportation Planning has not indicated a need for roadway improvements.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Mobility: Goal 3	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	Transportation Planning has not indicated a need for roadway improvements.
13	Mobility: Goal 3	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Transportation Planning has not indicated a need for roadway improvements.
14	Mobility: Goal 3	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	The proposal does not have direct residential access to high speed roadways.
15	Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Existing utilities serve the area.
16	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.	✓	An adequate water supply is available to the site.
17	Community Facilities: Goal 2	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has not indicated that sewage treatment will be an issue.
18	Livability: Goal 1	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 is preserving trees along the south property line near the existing creek.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
19	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 project has indirect flows from the ground surface to the streamside buffer and Fishpool Creek. The proposal does not provide full compliance with the stream buffer which would help filter pollutants from the impervious surfaces. The applicant has agreed to treat the first inch of rain for water quality.
20	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.	-	More than half of the middle and outer stream buffers are encroached upon by building or pavement. No mitigation is proposed for the encroachments.
21	Housing: Goal 1	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	This proposal adds to the diversity of housing options in this area, which is dominated by single family housing.
22	Housing: Goal 1	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	This proposal adds to the diversity of housing options in this area, which is dominated by single family housing. It is not identified for a specific user.
23	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	This proposal adds to the diversity of housing options in this area, which is dominated by single family housing. It is not identified for a specific user.
24	Housing: Goal 2	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The proposed housing is not located in a multi-modal transportation area or employment center. The proposal is located close to office and commercial zoning (residential use) that could be an activity center in the future.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
25	Housing: Goal 3	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	This proposal adds to the diversity of housing options in this area, which is dominated by single family housing.
26	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The site is vacant and will not displace residents.
27	Housing: Goal 3	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The proposal is not utilizing an innovative housing option. The proposal has not indicated if it will be affordable.

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. 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.
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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the September 3, 2020 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
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. The site will utilize an oversized water quality unit that will treat the first 1" (inch) of rainwater.