

Planning Commission

Staff Report

March 5, 2020



Case No:	19-ZONE-0060
Project Name:	Hepburn Avenue Rezoning
Location:	1400 Hepburn Avenue
Owner(s):	Wilson Property Rentals LLC
Applicant:	Wilson Property Rentals LLC
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from R-5B Two-Family Residential to R-8A Multi-Family Residential
- **Waiver** from 10.2.4.B.1 to allow existing structures to encroach into the required property perimeter Landscape Buffer Area (LBA) (19-WAIVER-0061)
- **Detailed District Development Plan** with Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located at the intersection of Hepburn Avenue and Edward Street. The site is currently developed as a multi-family residential structure with six units and a detached garage. The applicant proposes to rezone the property to R-8A to allow use of the structure for six multi-family units.

The surrounding neighborhood is a mix of single-family, two-family, and multi-family uses. The site is included in the Original Highlands Neighborhood Plan study area.

In 1989, the site was denied a Certificate of Occupancy for a grocery store, which was appealed to the Board of Zoning Adjustment under docket B-24-89. The Board denied the appeal. In 1991, the site was issued an Order to Stop Use for the change in use from a grocery store in a residential zoning district to a nonconforming use of the property for three residential units. The order was appealed under docket B-86-91. The Board approved the appeal and approved a change in nonconforming use from a grocery store to three residential units.

Staff researched the Polk City Directories starting in 1991. From 1991 to 1998, two units are listed. Starting in 1999, three units are listed. In 2011, four units are listed. In 2019, the city directory listed five units. No city directory listing reflects six units.

In 2014, a home occupation was registered for Sunset Farms, LLC, described in the application as a local community supported agriculture/food consulting program.

In 2016, under enforcement case 16PM7912, the operation of a grocery store in the building was reported. This case was closed after several inspections failed to document the operation. The owner stated at the time to the inspector that the tenant operating the grocery store had already been evicted.

STAFF FINDING

Staff finds that the proposal does not meet the guidelines of the Comprehensive Plan. The Original Highlands Neighborhood Plan is an amendment to Plan 2040. The Neighborhood Plan is explicit in its

recommendation that the subject property be zoned R-5B and be used for single- or two-family residential use only. The site has nonconforming rights for a third unit. Six units is not supported by the Neighborhood Plan and no nonconforming rights exist for six units. The request generally meets the requirements of the Land Development Code, with the exception of the requested waiver. Staff finds that the requested waiver is adequately justified and meets the standards of review.

At the December 19, 2019, the applicant agreed to a binding element restricting rents such that the units qualify as affordable housing. Sample binding element language follows:

All multi-family units on the property, in perpetuity, shall be rented for amounts at or below the affordable rent standards established by [Program] or successor program.

The Land Development Code, in section 4.3.20, defines Affordable Rent as the greater of the amounts calculated by the HUD Fair Market Rent value and the Low Income Housing Tax Credit rent limits for Jefferson County. The Comprehensive Plan, Plan 2040, further references Louisville CARES and the Louisville Affordable Housing Trust Fund as affordable housing initiatives. A chart has been provided as part of this staff report, in Attachment 5, outlining the rental limits allowed by each program, except for the Louisville Affordable Housing Trust Fund which does not provide a rent schedule. The Planning Commission should modify the sample binding element language to include the program to be used to calculate affordable rent.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

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

The site is located in the Original Highlands Neighborhood Plan study area. The Original Highlands Neighborhood Plan (2006) recommended that the area which includes the subject property be rezoned to a blanket R-5B zoning. This was accomplished with an areawide rezoning in 2013 under docket 16074. The property was previously zoned R-6.

INTERESTED PARTY COMMENTS

Several interested neighbor emails have been received in opposition to the request. Two interested party emails have been received in support of the request.

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 Traditional Neighborhood Form District

This form is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings. Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are 50 to 120 years old, the Traditional Neighborhood Form may be used when establishing new developments and redevelopments. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) in the case of new developments or redevelopments using traditional building scales and site layouts, (c) the preservation of the existing or establishing a new grid pattern of streets and alleys, and (d) preservation of or creation of new public open spaces.

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

While the request complies with many guidelines in the Plan 2040 general document, the Original Highlands Neighborhood Plan is explicit in recommending that the subject property be used for only single- and two-family residential uses. The site was zoned R-6 prior to 2013, and was downzoned to R-5B in an areawide rezoning driven by the Neighborhood Plan. The Neighborhood Plan does not support rezoning the property to permit more than two residential units (although the property has nonconforming rights for three).

The Original Highlands Neighborhood Plan is an adopted amendment to Plan 2040, and provides specific guidance on the defined neighborhood. Plan 2040 is a general document addressing development in all of Louisville Metro, while the Neighborhood Plan is specific to this location. As a result, staff must weigh the contradictions between Plan 2040 and the Neighborhood Plan in favor of the Neighborhood Plan.

The proposed zoning district and site plan are not generally in compliance with the plan elements of Plan 2040, and with the Original Highlands Neighborhood Plan.

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 WAIVER OF SECTION 10.2.4.B.1

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

STAFF: The waiver will not adversely affect adjacent property owners as the waiver reflects the retention of existing conditions on the site, which have caused no known adverse effects.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages the re-use of existing structures. To reduce or eliminate the encroachment, the existing structure would have to be removed and reconstructed on a new footprint.

- (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 encroaching structure already exists and no additional encroachment is proposed.

- (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 by requiring the applicant to move the existing structure, which is infeasible.

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: The existing principal structure on the property was built circa 1893 and is proposed to be preserved. No natural resources appear to exist on the site. No removal of existing tree canopy is proposed.

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

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

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

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

- (d) The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- (e) The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area:

STAFF: The overall site design is compatible with the existing and future development of the area, as the structure exists and is proposed to be preserved. The overall land uses are not compatible with the existing and future development of the area. The proposal is for high-density residential zoning in an existing low-density residential community. The Original Highlands Neighborhood Plan recommends restricting development in this area to single- and two-family residential going forward.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Land Development Code with the exception of the requested waiver. The proposed density is not in conformance with the Comprehensive Plan as amended by the Original Highlands Neighborhood Plan.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-5B to R-8A
- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Detailed District Development Plan** with **Binding Elements**

NOTIFICATION

Date	Purpose of Notice	Recipients
10/10/2019	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 8
12/05/2019	Hearing before PC	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 8
11/20/2019	Hearing before PC	Sign Posting on property
12/07/2019	Hearing before PC	Legal Advertisement in the Courier-Journal

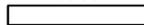
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Staff Plan 2040 Checklist
4. Proposed Binding Elements
5. Chart of Affordable Rent Calculations by Program

1. Zoning Map



1400 Hepburn Avenue
feet



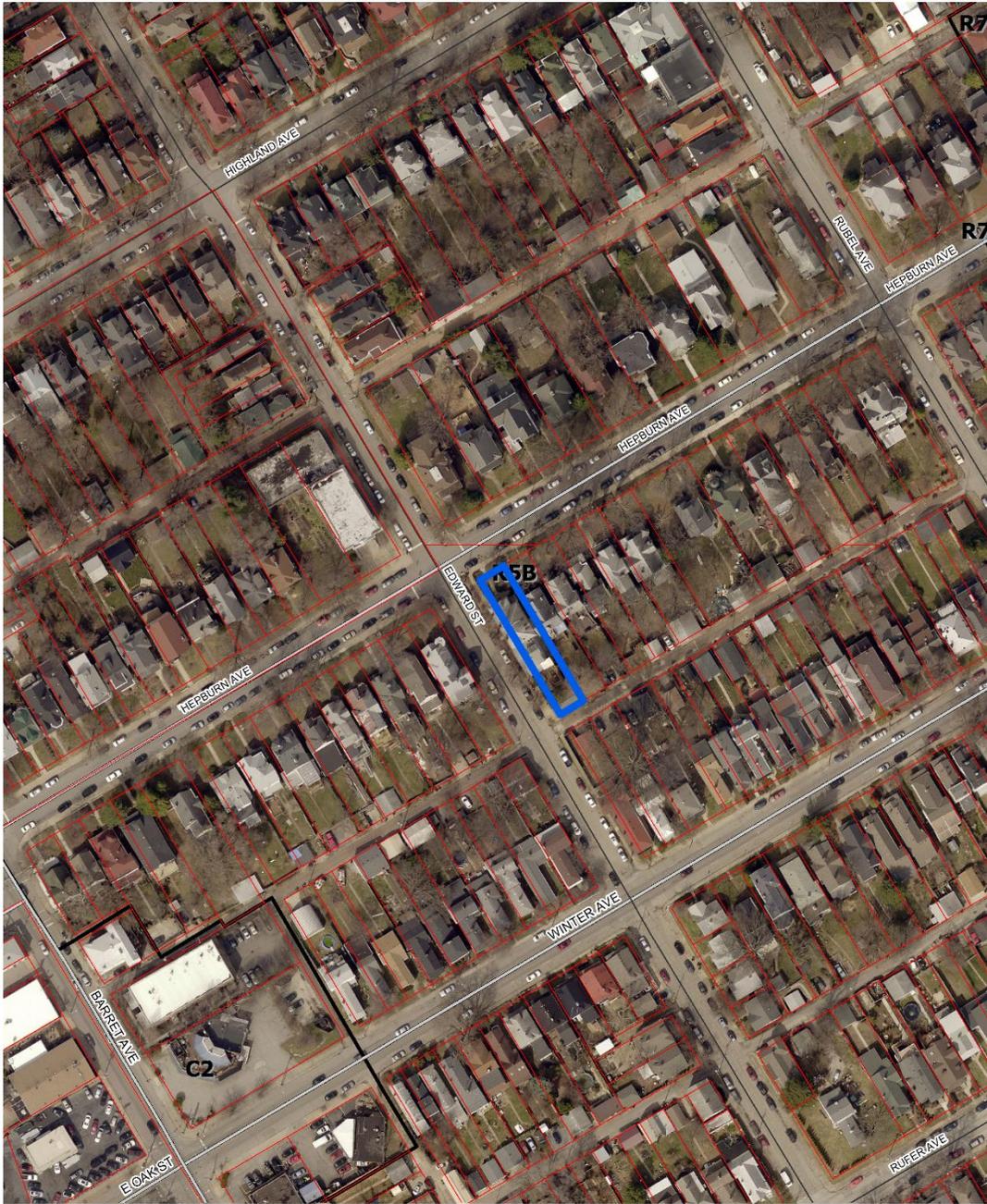
140

Map Created: 8/29/2019

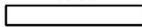


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2. Aerial Photograph



1400 Hepburn Avenue
feet



140

Map Created: 8/29/2019



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3. Staff Plan 2040 Checklist

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

Traditional 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.	-	Although the subject site is ½ block from a transit route on Winter Avenue, and 1 block from another transit route on Barret Avenue, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.
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 applicant requests a waiver to encroach into the required Landscape Buffer Area, due to the existing structures already encroaching. Appropriate transitions therefore cannot be provided.
3	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposed zoning district would re-use an existing structure for residential and/or office uses.
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.	✓	No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site.
5	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	The proposal preserves and re-uses the existing structure.
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 proposal would re-use an existing structure on the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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 zoning district would permit higher density and intensity uses. The site is located near an existing marketplace corridor at Bardstown Road. A second activity corridor exists at Barret Avenue. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.
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.	-	Access to the site is through a neighborhood of mostly single-family and two-family uses.
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 density allowed by R-8A is not necessarily compatible with the surrounding land uses. R-8A allows a much higher density than the single- and two-family residential permitted by the surrounding R-5B zoning.
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 approved the proposal.
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 approved the proposal.
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 approved the proposal.
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 approved the proposal.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
14	Mobility: Goal 3	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No direct residential access to high-speed roadways is proposed.
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.	✓	The relevant utilities have approved the proposal.
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.	✓	Louisville Water Company has approved the proposal.
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 approved the proposal.
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 fully developed and no native plant communities are present on the site.
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.	✓	No karst features are evident on the site.
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.	✓	The subject site is not located in the regulatory floodplain.
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.	-	The proposed zoning district would permit a variety of housing types. The reuse of the existing structure reflects the form district pattern. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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.	-	The proposed zoning district would permit housing options that support aging in place, by providing additional housing. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.
23	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	-	The existing zoning district would permit inter-generational mixed-income development, and the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.
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 subject site is located close to two transit corridors and two activity corridors.
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.	-	The proposed zoning district would increase the variety of ownership options and unit costs throughout Louisville Metro. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.
26	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No existing residents are proposed to be displaced by the proposed change to the zoning district.
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 proposed zoning district would permit the use of innovative housing methods. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location.

4. Proposed Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. The residential character of the structure shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission or its designee:
 - a. roof line
 - b. building material
 - c. porch
 - d. windows
5. 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. 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.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. 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.
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.

5. **Chart of Affordable Rent Calculations by Program**

ATTACHMENT 2

Income Limit Category	Persons in Family							
	1	2	3	4	5	6	7	8
80% AMI	\$42,800	\$48,900	\$55,000	\$61,100	\$66,000	\$70,900	\$75,800	\$80,700
60% AMI	\$32,100	\$36,720	\$41,280	\$45,840	\$49,560	\$53,220	\$56,880	\$60,540

Apt #	Bedrooms	Rent	Utilities	Total Occupancy Costs	HUD Fair Market Rent Limits	LIHTC 60% Rent Limits	CARES Rent Limits
1	1 Bedroom	\$800	@\$100	\$900	\$688	\$860	\$1,147
2	1 Bedroom	\$953	@\$100	\$1,053	\$688	\$860	\$1,147
3	2 Bedroom	\$1,000	\$150	\$1,150	\$853	\$1,032	\$1,376
4	1 Bedroom	\$850	@\$100	\$950	\$688	\$860	\$1,147
5	Efficiency	\$745	included	\$745	\$602	\$802	\$1,070
6	Efficiency	\$586	included	\$586	\$602	\$802	\$1,070

Amount Over/Under FMR	Amount Over/Under LIHTC	Amount Over/Under CARES
\$212	\$40	-\$247
\$365	\$193	-\$94
\$297	\$118	-\$226
\$262	\$90	-\$197
\$143	-\$57	-\$325
-\$16	-\$216	-\$484

over is displayed as a positive amount, while under is displayed as a negative amount