

# Planning Commission Staff Report

January 5, 2017



<b>Case No:</b>	<b>16ZONE1055</b>
<b>Request:</b>	<b>Change in zoning from C-1 to C-2</b>
<b>Project Name:</b>	<b>Burdorf Properties</b>
<b>Location:</b>	<b>124 Saint Matthews Ave &amp; 3939 Shelbyville Rd</b>
<b>Owner:</b>	<b>Burdorf Properties, LLC</b>
<b>Applicant:</b>	<b>Seiller Waterman, LLC</b>
<b>Representatives:</b>	<b>Seiller Waterman, LLC; Advanced Civil Engineering Land Surveying</b>
<b>Jurisdiction:</b>	<b>Saint Matthews</b>
<b>Council District:</b>	<b>9 – Bill Hollander</b>
<b>Case Manager:</b>	<b>Brian Mabry, AICP, Planning &amp; Design Supervisor</b>

### REQUEST

- Change in zoning from C-1 to C-2 for approximately 1.13 acres
- General District Development Plan

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject property is at the northwest corner of Shelbyville Road and Saint Matthews Avenue in the City of Saint Matthews. The property is irregularly shaped with access to Westport Road, Saint Matthews Avenue, and Shelbyville Road. No construction is proposed. The applicant requests the rezoning in order to allow the existing restaurants on the property to have indoor and outdoor alcohol sales and consumption. This use is allowed in the requested C-2, but not allowed in the existing C-1. Surrounding properties are zoned and used commercially or industrially.

Overall, the subject property is approximately 2.55 acres in area. Of that, 1.13 acres are proposed to be rezoned while the remainder is already zoned C-2. One portion of the property that is part of the request consists only of an off-street parking area with 20 whole parking spaces and nine additional parking spaces that are partially within the rezoning request area.

The other portion of the property subject to the request has a building that, at its tallest, is four stories in height. The building is 63,275 square feet in gross building area and has a Floor Area Ratio of .57. The building currently houses Drake's and BoomBozz restaurants along with a furniture store.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b><i>Subject Property</i></b>			
<b>Existing</b>	Restaurant / Retail	C-1	TC
<b>Proposed</b>	Restaurant with indoor and outdoor alcohol sales and consumption/Retail	C-2	TC
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Bank, medical & warehousing	C-1 & M-1	TC
<b>South</b>	Retail	C-1 & C-2	TC
<b>East</b>	Auto service, restaurant & retail	C-1 & C-2	TC
<b>West</b>	Restaurant / microbrewery & off-street parking	C-1 & C-2	TC

## PREVIOUS CASES ON SITE

None

## INTERESTED PARTY COMMENTS

None received.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Saint Matthews Development Code

## 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 Cornerstone 2020; 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 Cornerstone 2020 which have substantially altered the basic character of the area.

## STAFF ANALYSIS FOR REZONING

The subject property is surrounded by a mixture of non-residential uses. Access to the site comes from Saint Matthews Avenue, Westport Road, and Shelbyville Road. The proposal contains a mixture of retail and restaurants. The existing building is built right at the ROW line of Shelbyville Road. A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk. The parking lot for the subject property is connected to the property to the north, a bank. The scale and design of the building are in keeping with the Town Center Form District. The use and zoning is similar to and compatible with its surroundings. The proposal has received preliminary approval from Transportation Planning, MSD, and the APCD.

The existing zoning classification is inappropriate and the proposed classification is appropriate because the site consists of a long-standing set of uses that serve alcoholic beverages for indoor and outdoor consumption and the change in zoning would make such activity a permitted, conforming activity.

A checklist is attached to the end of this staff report with a more detailed analysis. Although Saint Matthews does not have form districts adopted in its Development Code, the area is mapped as Town Center on LOJIC. Therefore, the Comprehensive Plan checklist at the end of this report is based on Town Center policies. All other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

The Saint Matthews City Council has zoning authority over the property in question. The Louisville Metro Planning Commission is charged with making a recommendation to the Saint Matthews City Council regarding the appropriateness of this zoning map amendment.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR GDDP

- 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: LOJIC shows no natural resources or environmental constraints on the 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 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 and land uses are compatible with the existing and future development of the area.

- 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 Saint Matthews Development Code.

### **TECHNICAL REVIEW**

- The proposal is in order and has received preliminary approvals from Transportation and MSD.

### **STAFF CONCLUSIONS**

The subject property is surrounded by a mixture of non-residential uses. Access to the site comes from Saint Matthews Avenue, Westport Road, and Shelbyville Road. The proposal contains a mixture of retail and restaurants. The existing building is built right at the ROW line of Shelbyville Road. A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk. The parking lot for the subject property is connected to the property to the north, a bank. The scale and design of the building are in keeping with the Town Center Form District. The use and zoning is similar to and compatible with its surroundings. The proposal has received preliminary approval from Transportation Planning, MSD, and the APCD.

The existing zoning classification is inappropriate and the proposed classification is appropriate because the site consists of a long-standing set of uses that serve alcoholic beverages for indoor and outdoor consumption and the change in zoning would make such activity a permitted, conforming activity.

The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Saint Matthews Development Code.

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 Cornerstone 2020 which have substantially altered the basic character of the area. This determination shall take the form of a **RECOMMENDATION** to **APPROVE** or **DENY** the zoning map amendment from C-1 to C-2 and the detailed district development plan.

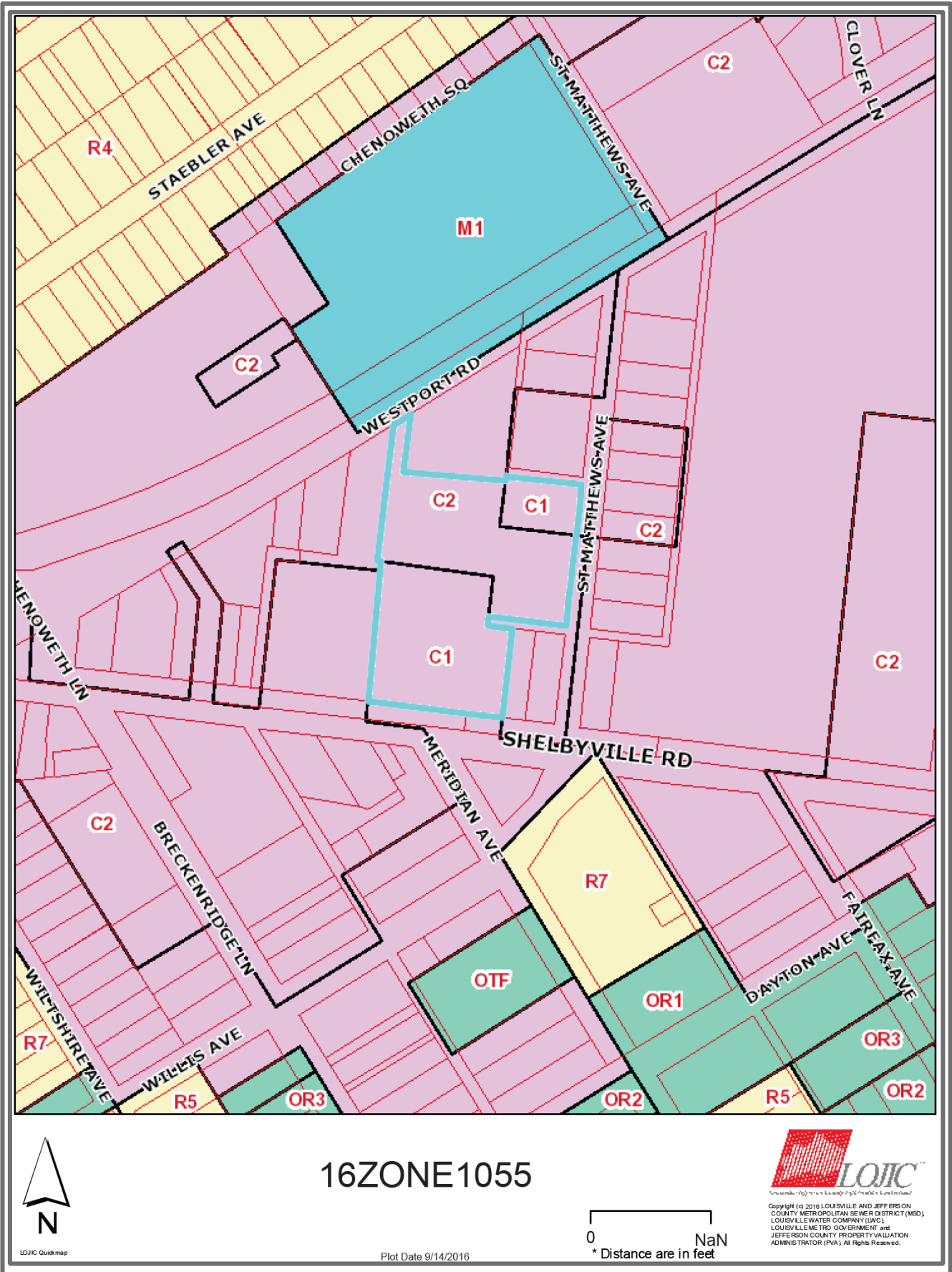
**NOTIFICATION**

Date	Purpose of Notice	Recipients
11/22/16	Meeting before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 9 Notification of Development Proposals
12/22/16	Hearing before PC	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 9 Notification of Development Proposals
12/21/16	Hearing before PC	Sign Posting on property
12/23/16	Hearing before PC	Legal Advertisement in the Courier-Journal

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Staff Checklist
4. Proposed Binding Elements

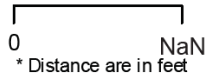
1. Zoning Map



LOJIC Quickmap

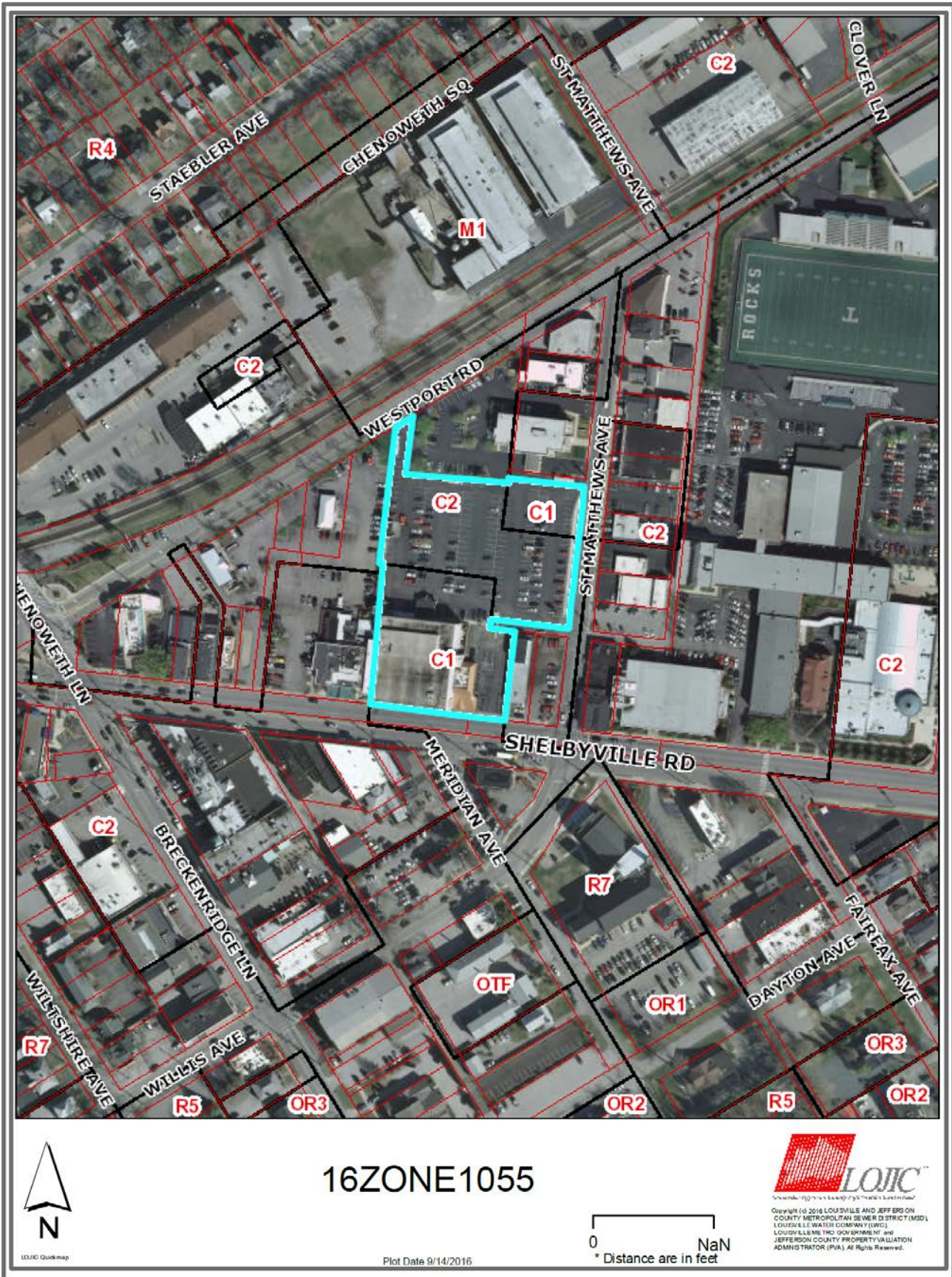
16ZONE1055

Plot Date 9/14/2016



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2. Aerial Photograph



### 3. Cornerstone 2020 Staff Checklist

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

#### Town Center: Non-Residential

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
1	Community Form/Land Use Guideline 1: Community Form	B.5: The proposal supports a compact mixture of moderately intense uses such as shopping, restaurants and offices, and may include civic uses such as libraries, government offices, police or fire stations and religious facilities.	✓	The proposal supports a mixture of retail and restaurants.
2	Community Form/Land Use Guideline 1: Community Form	B.5: Buildings are located close to and oriented toward the street.	✓	The existing building is built right at the ROW line of Shelbyville Road.
3	Community Form/Land Use Guideline 1: Community Form	B.5: The proposal includes a high level of pedestrian, roadway, transit and bicycle access, and a connected street pattern.	✓	A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk.
4	Community Form/Land Use Guideline 1: Community Form	B.5: The proposal, if it is a high intensity use, is located in close proximity to a major thoroughfare with intensity of use decreasing toward the adjacent neighborhood.	N/A	The proposal is not a high intensity use.
5	Community Form/Land Use Guideline 2: Centers	A.1/7: The proposal, which will create a new center, is located in the Town Center Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	N/A	The proposal will not create a new center. The site is an existing use that is proposed to continue.
6	Community Form/Land Use Guideline 2: Centers	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	✓	The businesses on site, which are proposed to remain, appear to have a sufficient population to support them.
7	Community Form/Land Use Guideline 2: Centers	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	✓	The proposal is compact in that it is several stories tall at its highest and uses existing infrastructure.
8	Community Form/Land Use Guideline 2: Centers	A.5: The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place.	✓	The proposal supports a mixture of retail and restaurants. A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
9	Community Form/Land Use Guideline 2: Centers	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	✓	The proposal consists of a multi-story mixed use building with restaurants and retail.
10	Community Form/Land Use Guideline 2: Centers	A.12: If the proposal is a large development in a center, it is designed to be compact and multi-purpose, and is oriented around a central feature such as a public square or plaza or landscape element.	N/A	The proposal is not a large development.
11	Community Form/Land Use Guideline 2: Centers	A.13/15: The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns.	✓	The proposal shares parking with and is connected to adjacent uses.
12	Community Form/Land Use Guideline 2: Centers	A.14: The proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements.	✓	Utilities can be provided for the site or shared.
13	Community Form/Land Use Guideline 2: Centers	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	✓	A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk.
14	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.	N/A	The building exists, with the first floor exterior being most compatible with other buildings in the area.
15	Community Form/Land Use Guideline 3: Compatibility	A.4/5/6/7: The proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.	✓	The proposal does not constitute a non-residential expansion into an existing residential area.
16	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	N/A	There are no known potential odors or emissions associated with the existing use.
17	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	The proposal has received preliminary approval from Transportation Planning.
18	Community Form/Land Use Guideline 3: Compatibility	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	✓	Lighting must comply with Louisville Metro Code of Ordinances.



#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
19	Community Form/Land Use Guideline 3: Compatibility	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.	N/A	The proposal is not a higher density or intensity use.
20	Community Form/Land Use Guideline 3: Compatibility	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	N/A	The proposal is not in a transitional area.
21	Community Form/Land Use Guideline 3: Compatibility	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	N/A	The surrounding uses are not incompatible with the proposed use.
22	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	The proposal has setbacks, lot dimensions and building height compatible with its surroundings.
23	Community Form/Land Use Guideline 3: Compatibility	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	N/A	Parking, loading and delivery areas are not adjacent to residential areas.
24	Community Form/Land Use Guideline 3: Compatibility	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	N/A	A portion of the existing parking off-street parking area is screened from another off-street parking area. No screening exists between the off-street parking and Saint Matthews Avenue because such screening is not triggered in the Saint Matthews Development Code by the proposed change to allow outdoor consumption of alcohol.
25	Community Form/Land Use Guideline 3: Compatibility	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	N/A	No parking garages are proposed.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
26	Community Form/Land Use Guideline 3: Compatibility	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	✓	Signs must comply with sign standards for the City of Saint Matthews.
27	Community Form/Land Use Guideline 4: Open Space	A.2/3/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	N/A	Open space dedication is not needed for this proposal.
28	Community Form/Land Use Guideline 4: Open Space	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.	N/A	Open space dedication is not needed for this proposal.
29	Community Form/Land Use Guideline 4: Open Space	A.5: The proposal integrates natural features into the pattern of development.	N/A	LOJIC shows no natural features on site.
30	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.1: The proposal 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.	N/A	LOJIC shows no natural features on site.
31	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	N/A	No historic buildings are on site.
32	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	N/A	LOJIC shows no wet soils or slopes on site.
33	Marketplace Guideline 6: Economic Growth and Sustainability	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	✓	The subject site is in the downtown area of Saint Matthews.
34	Marketplace Guideline 6: Economic Growth and Sustainability	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	N/A	The proposal is not industrial.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
35	Marketplace Guideline 6: Economic Growth and Sustainability	A.6: Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.	✓	The proposal is within an activity center and located on a Major Arterial.
36	Marketplace Guideline 6: Economic Growth and Sustainability	A.8: Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.	N/A	The proposal is not industrial.
37	Mobility/Transportation Guideline 7: Circulation	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	✓	The proposal has received preliminary approval from Transportation Planning.
38	Mobility/Transportation Guideline 7: Circulation	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk.
39	Mobility/Transportation Guideline 7: Circulation	A.6: The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of "through" roads.	✓	The proposal has received preliminary approval from Transportation Planning.
40	Mobility/Transportation Guideline 7: Circulation	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	✓	The proposal has received preliminary approval from Transportation Planning.
41	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	✓	The proposal includes parking that falls between the minimum required and the maximum allowed.
42	Mobility/Transportation Guideline 7: Circulation	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	✓	The proposal connects to adjacent nonresidential development.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
43	Mobility/Transportation Guideline 8: Transportation Facility Design	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	N/A	No stub streets were needed or proposed.
44	Mobility/Transportation Guideline 8: Transportation Facility Design	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	✓	Access does not take place through areas of significantly lower intensity or density.
45	Mobility/Transportation Guideline 8: Transportation Facility Design	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	N/A	No new roadways are being created.
46	Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit	A.1/2: The proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	✓	A TARC stop is immediately in front of the building. The site is within an area that has a connected street pattern. The site is adjacent to a 6 to 9-foot wide sidewalk.
47	Livability/Environment Guideline 10: Flooding and Stormwater	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue-line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	✓	The proposal has received preliminary approval from MSD.
48	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	The proposal has received preliminary approval from APCD.
49	Livability/Environment Guideline 13: Landscape Character	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	✓	LOJIC shows no natural corridors on the site.
50	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	The proposal is located in area served by utilities.
51	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	The proposal has access to water.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
52	Community Facilities Guideline 14: Infrastructure	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	✓	The proposal has received preliminary approval from MSD.

**4. Proposed Binding Elements**

1. The development shall be in accordance with the approved general development plan, all applicable sections of the Saint Matthews Development Code and agreed upon binding elements unless amended pursuant to the Saint Matthews Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee (and to the City of Saint Matthews) for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 63,275 square feet of gross floor area.
3. No outdoor advertising signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
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 Develop Louisville, 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 Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the 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.