

Planning Commission

Staff Report

September 15, 2022



Case No:	22-ZONE-0068
Project Name:	Southside Drive Rezoning
Location:	7332 Southside Drive, 5437 & 5439 New Cut Road
Owner(s):	Golden Wash LLC
Applicant:	Golden Wash LLC
Jurisdiction:	Louisville Metro
Council District:	25 – Amy Holton Stewart
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from R-5 Single Family Residential to C-1 Commercial
- **Waivers:**
 - #1: from 5.5.1.A.3.a to permit parking in front of the principal structure (22-WAIVER-0079)
 - #2: from 5.5.1.A.3.d and 5.9.2.A.1.b.ii to omit the required vehicular connection between abutting commercial developments (22-WAIVER-0078)
 - #3: from 5.5.1.A.3.a to omit a required masonry wall between the parking along Southside Drive and the abutting street (22-WAIVER-0123)
 - #4: from 10.2.4 to allow encroachment into a required property perimeter Landscape Buffer Area by parking, a building, and a dumpster enclosure (22-WAIVER-0145)
- **Variance** from 5.1.12.A.2.a to allow a principal structure to exceed the setback permitted by infill standards (22-VARIANCE-0065)
- **Detailed District Development Plan** with Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located at the intersection of New Cut Road and Southside Drive, and consists of one parcel partially developed with an existing restaurant. The applicant proposes to subdivide the site into two lots, and rezone the R-5-zoned portion of the property in order to construct a new 6,000 square foot retail structure in the existing parking area.

The site is located in the Town Center form district in a mixed-use, generally commercial intersection center. Some residential is located nearby but the majority of the nearby uses are non-residential in nature.

STAFF FINDING

Staff finds that the proposed zoning change would meet the guidelines of the Comprehensive Plan if a code compliant site plan were proposed. The site plan does not meet the requirements of the Land Development Code and does not generally meet the guidelines of the Comprehensive Plan, as it is significantly different from the site design envisioned by the Town Center form district. Staff finds that the requested waivers #1 and #3, and the requested variance, are not adequately justified and do not meet the standard of review. Staff finds that the requested waivers #2 and #4 are adequately justified and meet the standard of review.

TECHNICAL REVIEW

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

The site is within the study area for the New Cut Road/Taylor Boulevard Corridor Study. The portion of the existing site to be rezoned and redeveloped is on the periphery of the study area and no recommendations are made for the Southside Drive portion of the property.

Binding Element #8 in Attachment 4 of this report was requested by Councilwoman Amy Holton Stewart. The Councilwoman also requested a fifth use be added to this Binding Element, but the applicant has not agreed to this. Planning Commission should discuss adding Binding Element 8(e) Package Liquor Stores.

INTERESTED PARTY COMMENTS

One interested party email in opposition to the request has been received by staff. One email was received from the affected council member neither in support nor in opposition.

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 Town Center Form District

The Town Center is a traditional and preferred form, larger in scale than the neighborhood center, which forms a focal point of activity. The Town Center has an identifiable core and is often located at a historic crossroads or the intersection of a major thoroughfare(s) and a collector roadway with connections to surrounding neighborhoods through walkways, local streets and residential collector streets. The amount of floor space in town centers is usually between 100,000 and 400,000 square feet reflecting a market area designed to serve a population of between 25,000 to 75,000.

The Town Center form typically has a compact mixture of moderately intense uses including shopping, restaurants, offices and residences. In its most traditional form, the Town Center ordinarily includes civic uses, such as libraries, government offices, police or fire stations and religious facilities. The presence of small-scale civic open space is a common but not essential feature. Buildings are generally close to and oriented toward the street. These characteristics strengthen the role of the Town Center as a community focal point.

The Town Center should have a high level of pedestrian, roadway, transit and bicycle access, a connected street pattern, shared parking and pedestrian amenities. More intense uses in the Town Center are located in close proximity to the major thoroughfare, and the intensity of use gradually declines toward the adjacent neighborhoods.

Town Centers are easily disrupted by new forms of development. Therefore, the harmony and compatibility of infill and redevelopment in Town Centers should receive special attention. The establishment of new Town Centers requires a high level of planning and design. The Comprehensive Plan envisions the preservation and enhancement of those town centers that already exist and encourages creation of new Town Centers that are in keeping with the goals, objectives and Policies.

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

The requested zoning of C-1 would generally be appropriate for the location given the site context. The site configuration of a long and narrow lot is not unusual in Traditional forms, and having the building close to the street and the parking in the rear is the typical site design for these types of lots. The majority of the parking is proposed for the rear of the site. Moving the building closer to the street and relocating the remaining parking to the rear would bring the site plan into compliance with the Comprehensive Plan description of the Town Center form.

Community Form Goal 1, Policy 3.1.5 describes the Town Center form. Town Centers are described as being a traditional and preferred form. The identifiable core of the form district for this site is the intersection of Southside Drive and New Cut Road. The form is described as having buildings which are generally close to and oriented toward the street, and this is one of the characteristics which strengthen the role of the Town Center as a community focal point.

Town Centers are noted to be easily disrupted by new forms of development. Therefore, the harmony and compatibility of infill and redevelopment in Town Centers should receive special attention.

The proposed zoning district is not generally in compliance with the plan elements or CHASE principles of Plan 2040. 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 5.5.1.A.3.a (Parking Location)

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

STAFF: The waiver will not adversely affect adjacent property owners as the parking requirements are internal to the site. However, the pedestrian experience along Southside Drive would be improved by the removal of the existing curb cut and moving the structure closer to the street.

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

STAFF: The waiver will violate specific guidelines of Plan 2040 as Plan 2040 describes the Town Center form as having buildings close to the street. Having parking located between the principal structure and the street distances the building from the street and disrupts the streetscape.

- (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 not the minimum necessary to afford relief to the applicant as the building could be moved closer to the street and the parking located in the rear. Much of the parking is already located in the rear, and so many patrons will need to find their way to the rear of the site as it is currently designed.

- (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: Strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because moving the rest of the parking to the rear of the building would still permit the site to be developed in a similar manner to how it is currently proposed.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.5.1.A.3.d and 5.9.2.A.1.b.ii

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

STAFF: The waiver will not adversely affect adjacent property owners as the most affected property has direct access to New Cut Road. Provision of the cross-connection would negatively impact the remaining green space on the site.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as pedestrian connectivity is still available between the affected sites, and patrons can still park on one lot and walk to a business on the other lot after visiting the business on the first site. This would satisfy the intentions of the Comprehensive Plan to reduce vehicle trips as customers visit multiple businesses on one trip.

- (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 provision of the connection would negatively impact the remaining green space on the site.

- (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: 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 because provision of the required cross-connection would prevent the applicant from providing adequate Interior Landscape Area in the parking lot with no overall benefit to future customers.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.5.1.A.3.a (Masonry Wall)

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

STAFF: The waiver will not adversely affect adjacent property owners as the provision of a wall would have no impact to neighboring properties. However, the pedestrian experience along Southside Drive would be improved by the provision of the wall and the visual impact of the parking lot in a Traditional form district would be lessened.

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

STAFF: The waiver will violate specific guidelines of Plan 2040 as Plan 2040 describes the Town Center form as having buildings close to the street. Having parking located between the principal structure and the street distances the building from the street and disrupts the streetscape. Providing a masonry wall would lessen this disruption.

- (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 not the minimum necessary to afford relief to the applicant as there are no site constraints that would prevent the provision of the required wall.

- (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: Strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there are no site constraints that would prevent the provision of the wall. The provision of the required wall would not negatively impact the ability of the applicant to develop the site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4

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

STAFF: The waiver will not adversely affect adjacent property owners as the most affected property is developed with a non-residential use. The required buffer would not protect any residents.

- (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 appropriate buffering and transitions between uses that are significantly different in density or intensity. The adjacent property is being used in a similar intensity as what would be permitted by the proposed zoning district.

- (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 subject site is relatively narrow and deep. Provision of the full required LBA would make development of the site infeasible.

- (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: 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 because provision of the required landscape buffer area is infeasible given the existing pavement on the site and the constraints of the shape of the site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM 5.1.12.A.2.a

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

STAFF: The requested variance will not adversely affect public health, safety or welfare as the increased setback will not create a visual obstruction or impact sight lines.

- (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 as the structures along Southside Drive are generally closer to the street than what the applicant proposes.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public as the affected structure will be constructed according to building code, including all fire codes.

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

STAFF: The requested variance will allow an unreasonable circumvention of zoning regulations as the requested setback permits the applicant to construct parking in front of the building, which other portions of the Land Development Code related to Traditional form districts do not allow. The applicant requests waivers from these other provisions in order to construct a suburban-style site in a Traditional form.

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 special circumstances which do not generally apply to land in the general vicinity or the same zone, as the site has no existing structures and the parking could be provided in the rear. Much of the parking is being provided in the rear.

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 deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the site could be redesigned to provide the required infill setback.

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

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no construction has yet taken place and the variance is being sought at this time.

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: No natural resources are evident 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: No open space requirements are pertinent to the request.

- (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 existing and planned future development in the area. The proposal situates the building relatively far from the street. The adjacent funeral home is located close to the street, and compatible development would be similarly situated.

- (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 requirements of the Land Development Code with the exception of the requested waivers and variance. The development plan does not conform with the Comprehensive Plan, as it does not align with the description of the Town Center form district.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-5 to C-1
- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Detailed District Development Plan with Binding Elements**

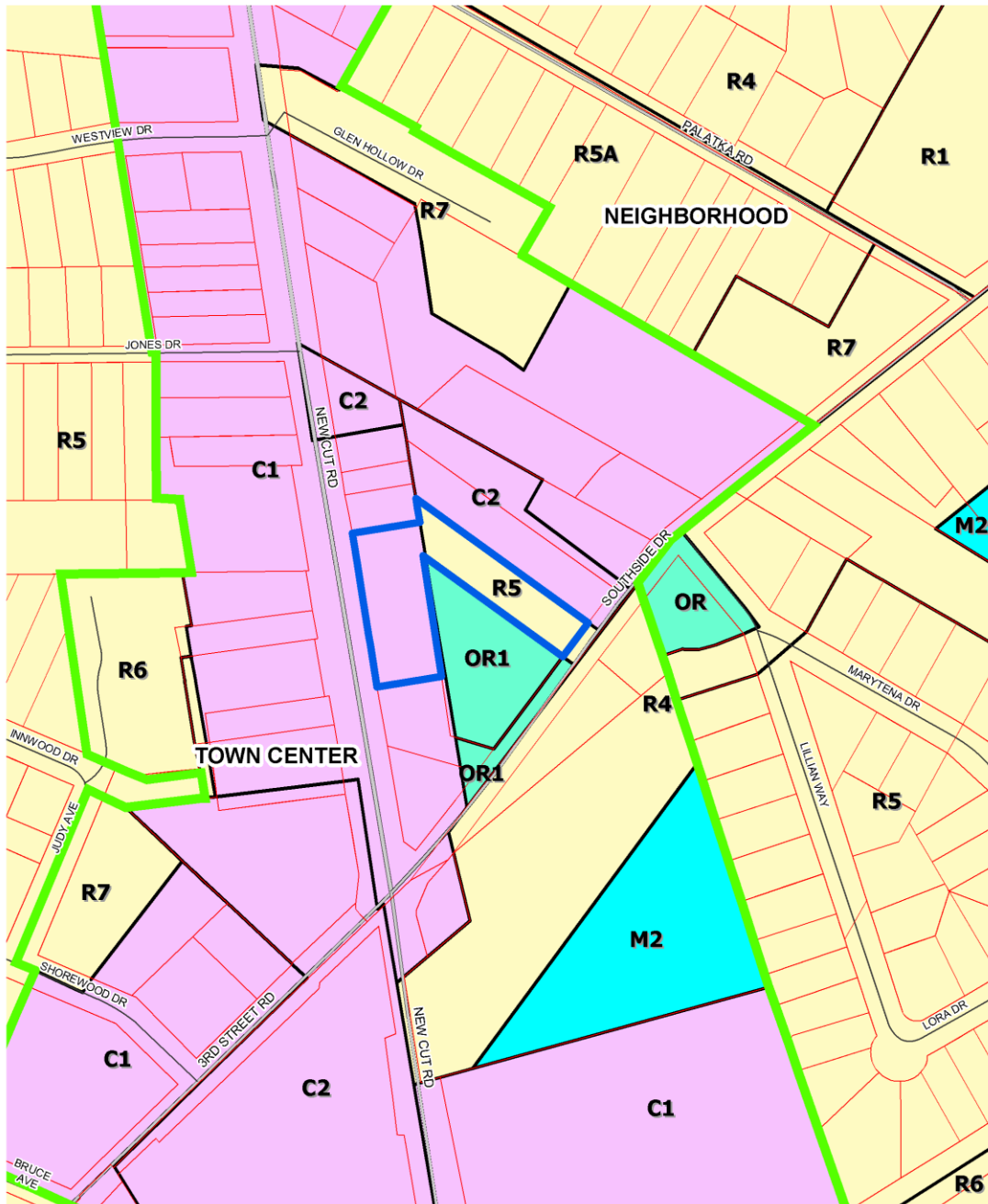
NOTIFICATION

Date	Purpose of Notice	Recipients
08/12/2022	Hearing before LD&T	1 st and 2 nd tier adjoining property owners & current residents Registered Neighborhood Groups in Council District 25
09/01/2022	Hearing before PC	1 st and 2 nd tier adjoining property owners & current residents Registered Neighborhood Groups in Council District 25
08/29/2022	Hearing before PC	Sign Posting on property
09/04/2022	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



5437 New Cut Road

feet



230

Map Created: 3/25/2022



Copyright (c) 2022, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

2. Aerial Photograph



5437 New Cut Road

feet



230

Map Created: 3/25/2022



Copyright (c) 2022, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

3. Staff Plan 2040 Checklist

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

Town Center: Non-Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	6. Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The proposal would not constitute a non-residential expansion into an existing residential area as the site is located in the Town Center form and is located at a commercial node.
2	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 site is located within an existing activity center and adjacent to transit along New Cut Road.
3	Community Form: Goal 1	8. Encourage industries to locate in workplace Form Districts or in areas readily served by infrastructure and transportation facilities, including transit, rather than isolated industrial sites.	NA	The proposal is not for industrial zoning.
4	Community Form: Goal 1	15. When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	✓	The proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions will comply with LDC and LMCO restrictions.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
5	Community Form: Goal 1	16. Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	NA	The proposed zoning district would not permit uses generating noxious odors, particulates or emissions.
6	Community Form: Goal 1	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	Access to the site is via New Cut Road, a major arterial, and Southside Drive, a minor arterial.
7	Community Form: Goal 1	18. Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The site is located within an activity center. Adverse impacts from noise will be mitigated by the commercial development between the site and nearby residences.
8	Community Form: Goal 1	21. Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	NA	The proposed zoning district would not permit junkyards, landfills or quarries or similar uses.
9	Community Form: Goal 2	1. Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	-	The site is located within an existing activity center. The design is not compatible with the desired form or adjacent uses.
10	Community Form: Goal 2	5. Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The proposed zoning district would permit retail development. The site is located in an existing activity center.
11	Community Form: Goal 2	6. Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposed zoning district would permit a more compact pattern of development.
12	Community Form: Goal 2	7. Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	-	The proposal would permit uses which are compatible with the rest of the activity center. However, the site design would not encourage vitality or a sense of place.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
13	Community Form: Goal 2	8. Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	The proposed zoning district would permit residential and offices uses above retail and other mixed-use multi-story retail buildings.
14	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would permit the provision of commercial, office and/or residential uses.
15	Community Form: Goal 2	10. Encourage outlot development in underutilized parking lots of existing development to promote utilization of existing infrastructure provided specific criteria for elements such as location, scale, signs, parking, lighting, and landscaping are met. Outlot development shall encourage street-level retail with residential units above.	✓	The proposal would construct a building in an underutilized parking lot.
16	Community Form: Goal 3	9. Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	NA	No natural features are evident on the site.
17	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.	NA	No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
18	Community Form: Goal 3	11. Encourage land uses within the Ohio River Corridor that are appropriate for and related to river corridor activities and that are consistent with the goals and objectives of the Ohio River Corridor Master Plan. Reserve appropriate riverfront sites such as the Upper River Road industrial area for river-related development. Allow development of commercial leisure businesses related to the river, such as boating services and restaurants in appropriate locations. Encourage new development in the Ohio River corridor and along key greenway and street connections to provide for public access in new riverfront development and to maintain views of the river from public rights-of-way.	NA	The site is not located in the Ohio River Corridor.
19	Community Form: Goal 3	12. When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	NA	The site is not located in a flood prone area, or on karst terrain.
20	Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	NA	The only existing structure on the site is proposed to be preserved.
21	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	NA	The only existing structure on the site is proposed to be preserved.
22	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 proposal would permit higher density within an existing activity center. New Cut Road is a transit corridor.
23	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 via New Cut Road, a major arterial, and Southside Drive, a minor arterial.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
24	Mobility: Goal 3	1. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposed C-1 zoning would permit a mix of complementary neighborhood-serving businesses and services.
25	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 proposed zoning district would permit a mixture of compatible land uses in an existing center. New Cut Road is a transit corridor. The site is accessible by bicycle, car, transit, pedestrians and people with disabilities.
26	Mobility: Goal 3	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The proposed zoning district would permit higher density mixed-use development in an existing center.
27	Mobility: Goal 3	4. Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following: 4.1. nodal connections identified by Move Louisville; 4.2. impact on freight routes; 4.3. time of operation of facilities; 4.4. safety; 4.5. appropriate linkages between neighborhoods and employment; and 4.6. the potential for reducing travel times and vehicle miles traveled.	✓	Transportation Planning has approved the proposal.
28	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.
29	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.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
30	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.
31	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.
32	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.
33	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.
34	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.
35	Economic Development: Goal 1	2. Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	NA	The proposal is not for industrial zoning.
36	Economic Development: Goal 1	3. Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	The site is located on a major arterial and at the intersection of a major and minor arterial.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
37	Economic Development: Goal 1	4. Utilize industrial sites near the airport and the Ohio River to support the growth and development of uses whose infrastructure and production needs require such a location or for land uses that support airport-oriented or river-oriented industrial uses.	NA	The proposal is not for industrial zoning. The site is not located near the airport or the Ohio River.
38	Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	NA	The proposal is not for industrial zoning.
39	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.	NA	The site is not located on karst terrain.
40	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.	NA	The site is not located in the regulatory floodplain.
41	Livability: Goal 1	24. Ensure, to the extent feasible, that critical facilities and those that store or use hazardous wastes are located outside the regulatory floodplain. Where essential community facilities must be located within a floodplain (e.g., pumping stations), ensure that these facilities are designed, located and operated in a manner that minimizes loss of services during flood events as well as limits, to the extent possible, floodplain disturbance.	NA	The site is not located in the regulatory floodplain.
42	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 proposal would support aging in place by providing neighborhood-serving retail in proximity to the neighborhood surrounding the center.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
43	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposal would encourage inter-generational mixed-income and mixed-use development in an existing center.
44	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 proposal would permit housing in proximity to a multi-modal transportation corridor. The proposal would permit neighborhood-serving uses on a transit corridor.
45	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No existing residents will be displaced by the proposal.
46	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 would permit innovative methods of housing.

4. **Proposed Binding Elements**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Southside Drive right-of-way.

- c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A 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 15, 2022 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.
 - f. A minor plat or legal instrument shall be recorded creating the lot lines as shown on the plan and dedicating right-of-way to Southside Drive. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - g. 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; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
5. 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.
 6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
 7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
 8. The following uses shall be prohibited on the site:
 - a. Smoke/Cigarette/Cigar shop
 - b. Vaping store
 - c. Pay Day Loan
 - d. Adult Entertainment