

Planning Commission Staff Report

December 5, 2019



Case No:	19-ZONE-0036
Project Name:	Commerce Crossings Retail
Location:	5210 Commerce Crossings Drive
Owner(s):	Elda Acquisition, LLC
Applicant:	Capstone Realty, Inc.
Representative(s):	Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	24 – Madonna Flood
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from OR-3 & R-4 to C-2, commercial
- **Variances:**
 1. **Variance** of Land Development Code, section 5.3.1.C.5 to reduce the non-residential to residential setback along the west property line from 30' to 20'
 2. **Variance** of Land Development Code, section 5.3.1.C.5 to increase the maximum setback along Old Preston Highway from 80' to 190'
- **Detailed District Development Plan**

CASE SUMMARY

The development proposal includes a 1-story, 17,000 sq. ft. retail center with parking and cross connectivity with adjacent uses. Future use of the center may include a restaurant with outdoor dining and alcohol service. The site is located at the intersection of Preston/Old Preston Highway and Commerce Crossings Drive, south of I-265. The site is split between Neighborhood and Workplace form districts and adjoins residential to the south, office to the west, and commercial to the north and east. Variances requested are associated with the requirements of the Neighborhood form district.

Associated Cases

9-32-97: Approved 7/17/97 with revisions and amendments occurring on 3/25/99, 4/13/00 & 2/13/03. The detailed plan and binding elements associated with the adjacent office development do not appear to be binding on the subject site. The site will contain a first round of detailed plan binding elements and remain subject to general plan binding elements as well.

STAFF FINDING

The proposal conforms to the land use and development policies of Plan 2040. The proposed development is split between NFD and SW form districts and is appropriately located for its intensity to provide supportive service to the surrounding population as well as employees within nearby activity/employment centers.

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 land use and development policies of 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 Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is located in the Suburban Workplace Form District

Suburban Workplace is a form characterized by predominately industrial and office uses where the buildings are set back from the street in a landscaped setting. Suburban workplaces often contain a single large-scale use or a cluster of uses within a master planned development. New larger proposed industrial uses are encouraged to apply for a planned development district.

In order to provide adequate transportation access in suburban workplaces connected roads, public transportation and pedestrian facilities should be encouraged. Walkways to workplace-serving uses are encouraged for workplace employees. Development within suburban workplace form districts may need significant buffering from abutting uses.

The site is located in the Neighborhood Form District

The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas.

The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages and incomes. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to large lot single family developments with cul-de-sacs, neo-traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero lot line neighborhoods with open space, and high density multi-family condominium-style or rental housing.

The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets.

The proposed development is split between NFD and SW form districts and is appropriately located for its intensity and density to provide supportive service to the surrounding population as well as employees within the employment center of the workplace district. While the proposal will result in the conversion of residential zoning to commercial zoning, the southern limits of the commercial boundary is in line with the southern limits the office and workplace form district boundaries to the immediate west. Mitigation, such as landscape buffers and building setback, to reduce the impacts of non-res development abutting residentially zoned property will be provided. The subject site is located where demand and adequate infrastructure exists as the site is at the intersection of a local industrial roadway and major arterial roadway with immediate access to I-265.

The proposed zoning district does not permit uses with significant impacts on human health beyond emissions that will be ordinarily expected by customer interaction and vehicle use. The proposed district does not permit uses that result in significant adverse impacts from noise. The subject site provides appropriate connections to adjacent roadway. Connectivity to Old Preston Highway has a minimal impact on the local roadway classification as the vehicular movement would immediately connect vehicles to an arterial roadway.

The proposed district is located partially within a workplace form district; however, the district does not occupy land that should be reserved for industrial development. Rather, it provides supportive services to the industrial employment nearby.

The subject site does not appear to contain sensitive environmental features.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE (1)

- (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 adjacent development is developed for non-residential purposes and the minimum landscape buffer will be provided.

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

STAFF: The requested variance will not alter the essential character of the general vicinity as the adjacent development is developed for non-residential purposes and the minimum landscape buffer will be provided.

- (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 adjacent development is developed for non-residential purposes and the minimum landscape buffer will be provided.

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

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations as the requirement calls for a non-residential to residential setback and because of the nature of the zoning district the setback is required, but the site is developed for non-residential uses.

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 arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the requirement calls for a non-residential to residential setback and because of the nature of the zoning district the setback is required, but the site is developed for non-residential uses.

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 deprive the applicant of reasonable use of the land for the reasons previously stated in these findings.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE (2)

- (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 proposed setback is consistent with the workplace form to which the site is oriented to serve.

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

STAFF: The requested variance will not alter the essential character of the general vicinity as the proposed setback is consistent with the workplace form to which the site is oriented to serve.

- (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 proposed setback does not impede the safe movement of pedestrians or vehicles.

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

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations as the proposed setback is consistent with the workplace form to which the site is oriented to serve.

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 arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is split between two form districts.

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 deprive the applicant of reasonable use of the land for the reasons previously stated in these findings.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought.

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 development plan does not significantly impact natural resources on the property and all tree canopies, landscaping buffering, and open space is provided.

- 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 will be provided as pedestrian connections and internal parking lot connectivity is provided.

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

STAFF: Sufficient open space is provided in tree canopy, landscaping buffering, and open space.

- 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 proposal is generally compatible within the scale and site design of nearby existing development and with the Workplace form district's pattern of development as the proposed development is consistent with existing development.

- 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 proposed development plan conforms to Plan 2040. The subject site is located where demand and adequate infrastructure exists as the site is at the intersection of a local industrial roadway and major arterial roadway with immediate access to I-265.

REQUIRED ACTIONS:

- **RECOMMEND** to the Louisville Metro Council that the Change-in-Zoning from OR-3 & R-4 to C-2, commercial on property described in the attached legal description be **APPROVED or DENIED**
- **APPROVE or DENY** the **Variance** of Land Development Code, section 5.3.1.C.5 to reduce the non-residential to residential setback along the west property line from 30' to 20'
- **APPROVE or DENY** the **Variance** of Land Development Code, section 5.3.1.C.5 to increase the maximum setback along Old Preston Highway from 80' to 190'
- **APPROVE or DENY** the **Detailed District Development Plan**

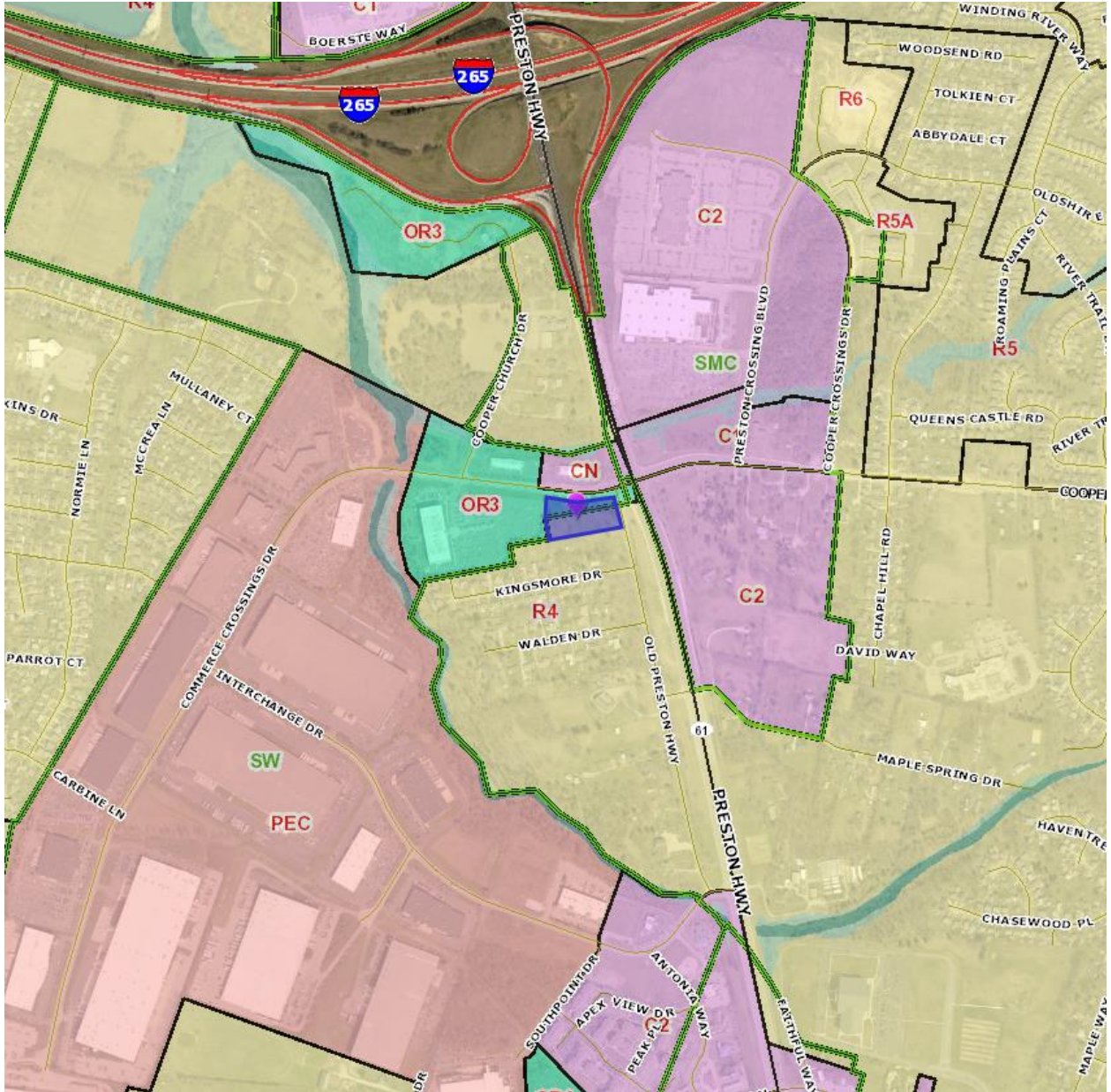
NOTIFICATION

Date	Purpose of Notice	Recipients
10/30/19	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 24
11/18/19	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 24
11/15/19	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

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

1. Zoning Map



2. Aerial Photograph



3. Plan 2040 Staff Checklist

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

Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Community Form	<p>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.</p>	✓	<p>While the proposed rezoning will result in the conversion of residential zoning to commercial zoning, the southern limits of the commercial boundary is in line with the southern limits the office and workplace form district boundaries to the immediate west. Mitigation, such as landscape buffers and building setback, to reduce the impacts of non-res development abutting residentially zoned property will be provided.</p>
Land Use & Development Goal 1: Community Form	<p>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.</p>	✓	<p>The subject site is located where demand and adequate infrastructure exists as the site is at the intersection of a local industrial roadway and major arterial roadway with immediate access to I-265.</p>
Land Use & Development Goal 1: Community Form	<p>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.</p>	✓	<p>The proposed development is split between NFD and SW form districts and is appropriately located for its intensity and density to provide supportive service to the surrounding population as well as employees within the employment center of the workplace district.</p>

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Community Form	15. When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	✓	The proposed zoning district does not permit the siting of hazardous uses.
Land Use & Development Goal 1: Community Form	16. Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	✓	The proposed zoning district does not permit uses with significant impacts on human health beyond emissions that will be ordinarily expected by customer interaction and vehicle use.
Land Use & Development Goal 1: Community Form	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	The subject site is located at the intersection of a local industrial road and arterial roadway. Expected traffic would not appear to have significant impacts on adjacent residential areas.
Land Use & Development Goal 1: Community Form	18. Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The proposed district does not permit uses that result in significant adverse impacts from noise and where noise is expected is away from residences.
Land Use & Development Goal 1: Community Form	21. Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	✓	The proposed district does not allow for hazardous use that negatively impact public health, safety, or welfare.
Land Use & Development Goal 2: Community Form	1. Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The proposed district is appropriately located for its scale and design to provided supportive use to the employment center and additional retail options for nearby populations. Infrastructure is sufficient to support a wide variety of uses.
Land Use & Development Goal 2: Community Form	4. Allow non-residential development within the Neighborhood, Traditional Neighborhood and Village Form Districts to occur only at locations with appropriate access and connectivity.	✓	The subject site provides appropriate connections to adjacent roadway. Connectivity to Old Preston Highway has a minimal impact on the local roadway classification as the vehicular movement would immediately connect vehicles to an arterial roadway.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 2: Community Form	5. Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The proposed district locates retail commercial development in an activity center where sufficient population exists and is anticipated to support it.
Land Use & Development Goal 2: Community Form	6. Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposed district results in an efficient land use pattern which concentrates non-residential activity within a non-residential activity center adjacent or within proximity to similar and higher intensity districts.
Land Use & Development Goal 2: Community Form	7. Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposed district encourages 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.
Land Use & Development Goal 2: Community Form	11. Ensure appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences.	✓	The proposed district will result in development that is in scale with adjacent development and provides additional supportive services to nearby residents and employees.
Land Use & Development Goal 3: Community Form	9. Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	The subject site does not appear to contain sensitive environmental features.
Land Use & Development Goal 3: Community Form	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	The subject property does not appear to contain wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists.
Land Use & Development Goal 3: Community Form	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.	✓	The subject site does not appear to impact the vulnerable environmental features or flood-prone areas.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 4: Community Form	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.	✓	The subject site does not appear to contain buildings, sites, districts and landscapes that are recognized as having historic or architectural value. The proposed district is compatible with the intensity of development in the area.
Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	Tree canopy will be provided as required by the LDC
Land Use & Development Goal 1: Mobility	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 development is split between workplace and neighborhood form districts adjacent to the marketplace corridor. It would appear that the zoning proposed is appropriately located near activity centers, employment centers, and public transportation systems (TARC route 45X).
Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access to the proposed districts is through areas of similar intensity and no significant nuisances will be created on nearby residential neighborhoods.
Land Use & Development Goal 3: Mobility	1. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposed activity is located in an area of compatible land uses that are isolated from service or retail oriented activity centers. The proposed district increases the types of uses that may serve employees or provide supportive services to the industrial area.
Land Use & Development Goal 3: Mobility	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The proposal is easily accessible by bicycle, car, transit, pedestrians and people with disabilities.
Land Use & Development Goal 3: Mobility	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The subject site provides all pedestrian amenities and is located near transit corridors.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 3: Mobility	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	The proposal has a limited impact on the transportation network.
Land Use & Development Goal 3: Mobility	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	The developer will bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.
Land Use & Development Goal 3: Mobility	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	The developer will make all necessary improvement to the transportation network required of their development.
Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The development appears to be in an area served by existing utilities or capable of being served by public or private utility extensions.
Land Use & Development Goal 2: Community Facilities	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	An adequate supply of potable water and water for fire-fighting purposes will be available.
Land Use & Development Goal 2: Community Facilities	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	Preliminary approval has been received from MSD.
Land Use & Development Goal 1: Economic Development	2. Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	✓	The proposed district is located partially within a workplace form district; however, the district does not occupy land that should be reserved for industrial development. Rather, it provides supportive services to the industrial employment nearby.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Economic Development	3. Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	The proposed district is along an arterial roadway within proximity to I-265. Nuisances will not be created as abutting roadways are intended to serve the proposed district.
Land Use & Development Goal 1: Economic Development	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	✓	The proposed district is located partially within a workplace form district; however, the district does not occupy land that should be reserved for industrial development. Rather, it provides supportive services to the industrial employment nearby.
Land Use & Development Goal 1: Livability	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	Preliminary approval has been received from MSD.
Land Use & Development Goal 1: Livability	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	Preliminary approval has been received from MSD.
Land Use & Development Goal 1: Livability	24. Ensure, to the extent feasible, that critical facilities and those that store or use hazardous wastes are located outside the regulatory floodplain. Where essential community facilities must be located within a floodplain (e.g., pumping stations), ensure that these facilities are designed, located and operated in a manner that minimizes loss of services during flood events as well as limits, to the extent possible, floodplain disturbance.	✓	The site does not appear to be within the floodplain. Further, the storage or treatment of hazardous uses is not permitted within the proposed district.

4. Proposed Detailed Plan Binding Elements

The development shall be subject to all applicable binding elements of the general plan, docket 9-32-97, as well as the following:

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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
 - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 5, 2019 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.
3. 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.
4. 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. 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.
6. The developer and/or property owner shall provide a cross over access agreement or private access easement to the property to the south if it is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.