

Planning Commission Staff Report

June 15, 2017



Case No:	16zone1074
Request:	Change in zoning from R-4 and PRD to R-6 with a Variance and a District Development Plan
Project Name:	Avoca Road Apartments
Location:	12201 and 12207 Avoca Road
Owner:	Fetter Properties LLC.; Joseph and Karoll Foreman
Applicant:	LDG Development
Representative:	Mindel Scott and Assoc.; Dinsmore and Shohl
Jurisdiction:	Louisville Metro
Council District:	19-Julie Denton
Case Manager:	Julia Williams, RLA, AICP, Planning Supervisor

REQUEST

- Change in zoning from R-4 and PRD to R-6
- Variance from Chapter 5.3.1.C to allow a 38' building height instead of the required 35' (3' variance)
- District Development plan

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The proposal is for 408 apartment units on 28.46 acres of land. 83% of the site is in existing tree canopy with 9% proposed to remain. The site is located adjacent to Berrytown Park to the west and an existing industrial activity center to the east.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant/Single Family Residential	PRD/R-4	N
Proposed	Multi-Family Residential	R-6	N
Surrounding Properties			
North	Single and Multi-Family Residential	R-4/R-5A,	N
South	Railroad/Single Family Residential	R-4	N
East	Fire Station/Industrial	R-4/M-2	N/SW
West	Park	R-4	N

PREVIOUS CASES ON SITE

- 14extension1001- Extension of expiration date, approved March 2014
 13848- R-5A to PRD approved July 2010
 12328- Extension of expiration date, approved March 2009
 9-18-06- R-4 to R-5A approved January 2007

INTERESTED PARTY COMMENTS

Please see attachments.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land 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

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Cornerstone 2020.

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 proposal is a high density residential use surrounded by the Neighborhood Form District and Suburban Workplace. High density would provide an additional housing choice for the neighborhood and area. The proposal is located along both a local level road and a collector. The proposal is located adjacent to a workplace activity center, a fire house, and a park. Access to the site is from collector level roadways. Transit is available along Heafer and N. English Station. Internal pedestrian circulation on the site is available and well connected. Transit is also available along N. English Station where an access easement is provided and a sidewalk to link the site is being made.

All other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

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

STAFF: The requested variance will not adversely affect public health safety or welfare since the variance is for 3' more than the requirement. The development is also adjacent to a mix of compatible uses, including a park and fire station.

- (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 since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures.

- (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 since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures.

- (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 the zoning regulations since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures.

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 since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures.

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 since the 3 story structures are located mainly interior to the site and adjacent to non-residential uses to the east. There is also a roadway and increased setback between the nearest adjacent residential and the 3 story structures.

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

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

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDP

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site and existing tree canopy is being preserved.

- 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: The open space proposed is in compliance with the Land Development Code requirements.

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

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

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

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

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

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

TECHNICAL REVIEW

- Technical review comments have been addressed.

STAFF CONCLUSIONS

The proposal generally meets the requirements of the Land Development Code and guidelines of the Comprehensive Plan.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal is in conformance with the Comprehensive Plan; OR the existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR if there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area.

NOTIFICATION

Date	Purpose of Notice	Recipients
5/11/17	Hearing before LD&T on 5/24/17	1 st and 2 nd tier adjoining property owners Subscribers of Council District 19 Notification of Development Proposals
6/1/17	Hearing before PC on 6/15/17	1 st and 2 nd tier adjoining property owners Subscribers of Council District 19 Notification of Development Proposals
5/31/17	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Staff Checklist
4. Existing Binding Elements (13848)
5. Proposed Binding Elements

2. **Aerial Photograph**



3. Cornerstone 2020 Staff Checklist

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

Neighborhood: 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.3: The proposal supports the creation of a mix of residential housing choices and densities for the neighborhood.	✓	The proposal is a high density residential use surrounded by the Neighborhood Form District and Suburban Workplace. High density would provide an additional housing choice for the neighborhood and area.
2	Community Form/Land Use Guideline 1: Community Form	B.3: If the proposal is classified as high density (greater than 12 dwelling units per acre), it is located on a major or minor arterial or in a location that has limited impact on adjacent low or moderate density developments.	✓	The proposal is for high density development located along both a local level road and a collector. The proposal is located adjacent to a workplace activity center, a fire house, and a park. Access to the site is from collector level roadways. Transit is available along Heafer and N. English Station.
3	Community Form/Land Use Guideline 1: Community Form	B.3: If the proposal introduces a new housing type to the neighborhood, it is designed to be compatible with nearby land uses.	✓	The proposal is located adjacent to a workplace activity center, a fire house, and a park.
4	Community Form/Land Use Guideline 1: Community Form	B.3: Neighborhood streets are designed to invite human interaction and easy access through the use of connectivity, and design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets.	✓	Internal pedestrian circulation on the site is well connected. Transit is available along N. English Station where an access easement is provided and a sidewalk to link the site to the available transit.
5	Community Form/Land Use Guideline 2: Centers	A.1. Locate activity centers within the Neighborhood Form District at street intersections with at least one of the intersecting streets classified as a collector or higher, AND one of the corners containing an established non-residential use.	✓	The proposal is a higher density residential use adjacent to an activity center that has been created in the N. English Station Road, Avoca Road, Old Henry Road area. The proposal is roughly at the intersection of 2 collectors where an industrial use separates the site from that intersection.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
6	Community Form/Land Use Guideline 2: Centers	A.2: Develop non-residential and mixed uses only in designated activity centers except (a) where an existing center proposed to expand in a manner that is compatible with adjacent uses and in keeping with form district standards, (b) when a proposal is comparable in use, intensity, size and design to a designated center, (c) where a proposed use requires a particular location or does not fit well into a compact center, (d) where a commercial use mainly serves residents of a new planned or proposed development and is similar in character and intensity to the residential development, or (e) in older or redeveloping areas where the non-residential use is compatible with the surroundings and does not create a nuisance.	NA	The proposal is not a mixed use or non-residential use.
7	Community Form/Land Use Guideline 2: Centers	A.4: Encourage a more compact development pattern that results in an efficient use of land and cost-effective infrastructure.	✓	The proposal is compact and organized around several open space features on the site. The site ties into all roadways and connects via a cross access to adjacent non-residential.
8	Community Form/Land Use Guideline 2: Centers	A.5: Encourage a mix of compatible uses to reduce traffic by supporting combined trips, allow alternative modes of transportation and encourage vitality and sense of place.	✓	The existing non-residential in the area will be served by the high density residential proposed. Transit is available. Sidewalks are provided along all roadways to connect to transit in the area as well as a pedestrian connection to the existing access easement through the adjacent non-residential to the east and to the park to the west.
9	Community Form/Land Use Guideline 2: Centers	A.6: Encourage residential uses in centers above retail and other mixed-use multi-story retail buildings.	-	Residential is proposed as a standalone use not associated with commercial.
10	Community Form/Land Use Guideline 2: Centers	A.7: Encourage new developments and rehabilitation of buildings to provide residential uses alone or in combination with retail and office uses.	✓	The proposal is a new development with a single high density residential use.
11	Community Form/Land Use Guideline 2: Centers	A.8/11: Allow centers in the Neighborhood Form District that serve the daily needs of residents and that are designed to minimize impact on residents through appropriate scale, placement and design.	✓	The proposal is not for a center in the NFD as there is an existing workplace center adjacent to the site and nearby which will provide employment opportunities for residents of the area.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
12	Community Form/Land Use Guideline 2: Centers	A.10: Encourage outlot development in underutilized parking lots provided location, scale, signs, lighting, parking and landscaping standards are met. Such outlot development should provide street-level retail with residential units above.	NA	Not applicable to current proposal.
13	Community Form/Land Use Guideline 2: Centers	A.12: Design large developments to be compact, multi-purpose centers organized around a central feature such as a public square, plaza or landscape element.	✓	The large development is organized around courtyard spaces located throughout.
14	Community Form/Land Use Guideline 2: Centers	A.13: Encourage sharing of entrance and parking facilities to reduce curb cuts and surface parking.	✓	The proposal indicates an access easement through an adjacent property for access to N. English Station.
15	Community Form/Land Use Guideline 2: Centers	A.14: Design and locate utility easements to provide access for maintenance and to provide services in common for adjacent developments.	✓	Utility easements can be accessed easily from the site and are partially shared with adjacent uses.
16	Community Form/Land Use Guideline 2: Centers	A.15: Encourage parking design and layout to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations.	✓	Parking is provided interior to the site. There is access shown from the site to the roadways that have transit available (Heafer and N. English Station).
17	Community Form/Land Use Guideline 2: Centers	A.16: Encourage centers to be designed for easy access by alternative forms of transportation.	✓	There is access shown from the site to the roadways that have transit available (Heafer and N. English Station).
18	Community Form/Land Use Guideline 3: Compatibility	A.1: The proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development.	✓	The scale and site design is generally compatible to the adjacent park and industrial development.
19	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility. (Only for a new development in a residential infill context, or if consideration of building materials used in the proposal is specifically required by the Land Development Code.)	✓	Building materials are similar to what is found in the area.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
20	Community Form/Land Use Guideline 3: Compatibility	A.3: The proposal is compatible with adjacent residential areas, and if it introduces a new type of density, the proposal is designed to be compatible with surrounding land uses through the use of techniques to mitigate nuisances and provide appropriate transitions between land uses. Examples of appropriate mitigation include vegetative buffers, open spaces, landscaping and/or a transition of densities, site design, building heights, building design, materials and orientation that is compatible with those of nearby residences.	✓	The proposal is a high density type of residential that is being introduced into the area. There are no residential uses directly adjacent to the site but are located across Heafer. Setbacks are being followed. The buildings are setback at further distances than required by the LDC.
21	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	Transportation Planning has not indicated any adverse impacts on adjacent roadways.
22	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 will meet LDC requirements.
23	Community Form/Land Use Guideline 3: Compatibility	A.10: The proposal includes a variety of housing types, including, but not limited to, single family detached, single family attached, multi-family, zero lot line, average lot, cluster and accessory residential structures, that reflect the form district pattern.	-	A single housing type is being proposed.
24	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.	✓	The proposal is higher density directly along a transit corridor with sidewalk access to transit. The proposal is located within an existing activity center.
25	Community Form/Land Use Guideline 3: Compatibility	A.13: The proposal creates housing for the elderly or persons with disabilities, which is located close to shopping, transit routes, and medical facilities (if possible).	✓	The proposal could be housing for elderly or persons with disabilities.
26	Community Form/Land Use Guideline 3: Compatibility	A.14/15: The proposal creates appropriate/inclusive housing that is compatible with site and building design of nearby housing.	✓	The proposal adds a housing type that is not generally found in the area. The design is generally compatible with the nearby housing due to the setbacks.
27	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.	✓	The proposal is located directly adjacent to non-residential uses where the buffers and setbacks provided are sufficient. The buildings are located further than the required setbacks.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
28	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.	✓	The proposal is located directly adjacent to non-residential uses where the buffers provided are sufficient.
29	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.	✓	Setbacks along all property lines are being followed. A tree canopy buffer is being provided between the site and the existing Heafer Road where there is lower density residential. The variance to be 3' above the requirement will not affect any existing residential.
30	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.	✓	Open space provided meets the requirements of the LDC and form district.
31	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.	✓	Open space provided meets the requirements of the LDC and form district.
32	Community Form/Land Use Guideline 4: Open Space	A.5: The proposal integrates natural features into the pattern of development.	✓	The site is 83% treed with only 9% remaining. The tree canopy is being preserved along the perimeter and within the existing cemetery on site. Proposed trees will be planted throughout the parking lot to help with the heat island that is created with the parking and impervious surfaces.
33	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.	✓	The site is 83% treed with only 9% remaining. The tree canopy is being preserved along the perimeter and within the existing cemetery on site. Proposed trees will be planted throughout the parking lot to help with the heat island that is created with the parking and impervious surfaces.
34	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.	✓	There is an existing cemetery being preserved on the site.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
35	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.	✓	Soils are not an issue with the proposal.
36	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.	✓	Roadway improvements to Avoca are being requested by Transportation Planning.
37	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.	✓	A portion of Avoca Road is proposed to be closed and a turnaround area constructed.
38	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 includes the dedication of ROW.
39	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.	NA	No new roadways are being created with this proposal.
40	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 to the site is through public roadway that serves more intense uses as well as lower intensity uses.
41	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.	NA	No new roadways are being created with this proposal.
42	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.	✓	Pedestrian access to Heaffer and N. English Station Road is being made. Sidewalks are provided within all ROWs as well as pedestrian access to the adjacent Berrytown Park and non-residential to the east.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
43	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 blueline 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.	✓	MSD has no issues with the proposal.
44	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.	✓	The site is 83% treed with only 9% remaining. The tree canopy is being preserved along the perimeter and within the existing cemetery on site. Proposed trees will be planted throughout the parking lot to help with the heat island that is created with the parking and impervious surfaces.
45	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	Existing and proposed utilities will serve the site.
46	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	An adequate water supply exists for the site.
47	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 Health Department has no issues with the proposal.

4. Existing Binding Elements (13848)

- ~~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. The density of the development shall not exceed:
Gross Density: 4.75 units per acre (118 units on 24.82 acres)
Net Density: 5.88 units per acre (118 units on 24.42 acres)~~
- ~~3. Signs shall be in accordance with Chapter 8.~~
- ~~4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~

- ~~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. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance permit is requested:
 - ~~a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.~~
 - ~~b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~~~
- ~~7. 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.~~
- ~~8. 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.~~
- ~~9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 18, 2007 and May 24, 2010 Planning Commission meetings.~~
- ~~10. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.~~
- ~~11. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.~~
- ~~12. As shown conceptually on the detailed district development plan and exhibits presented at the January 18, 2007 public hearing, an open space, park-like feature will be constructed in the upper corner of the development plan adjoining the park. This area will be separated from the park by a secured, gated, wrought-iron style fence, but there will be clear visibility to the park for residents to enjoy a park view. This area will have benches and a sidewalk connection to the remainder of the condominium community.~~
- ~~13. The property line parallel to Heafer Road shall be heavily screened to provide a good transition and privacy for condominium residents.~~

- ~~14. Buildings will be constructed primarily of brick and stone as shown on the renderings produced at the January 18, 2007 and May 24, 2010 public hearings. Other maintenance free materials may be used for dormers, gables and accents.~~
- ~~15. The developer shall grant an easement to MSD for future on-site sewer and drainage infrastructure. The location of the easement shall be determined by MSD and shall be granted at such time as that agency requests it.~~
- ~~16. The developer shall coordinate with the Kentucky Transportation Cabinet and Metro Public Works to ensure that the location of the proposed force main sewer lines shall not interfere with future plans to widen North English Station Road.~~
- ~~17. The proposed buildings, patios, decks and sunrooms on Lots 1-14, 26-36 and 80-93 may consume up to but not more than 40% of the required rear yard area.~~
- ~~18. The approved landscaping plan shall provide for landscaping materials (3 Type A/B trees per 100 linear feet) within the designated landscape buffer areas as shown on the approved preliminary subdivision plan.~~
- ~~19. Covenants, Conditions and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs of certain Planning Commission, Metro Works, MSD or other agency requirements. Among those CCR provisions shall be these requirements: (a) that all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities be installed by the developer prior to turn over of maintenance responsibilities to the Home Owners Association ("HOA")/Condominium Association; (b) that any shared water meters and property service connections for sanitary sewers be the sole responsibility of the HOA/Condo Association; (c) that any water, sewer and drainage facilities that cross lot lines be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and (d) that attached residences shall have easements over the adjoining lots of those attached units for purposes of incidental encroachments and property maintenance and repair.~~

5. 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. 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. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Avoca Road to provide a total of 40' feet from the centerline. 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.
 - 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. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. 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.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 15, 2017 Planning Commission meeting.
7. The applicant shall file a formal street closure application for the portion of Avoca Road to the west of the entrance to the subject property before approval of any construction plans for the proposed

development. The applicant shall, should Louisville Metro Government approve the street closure application, remove all pavement from the portion of the road that is closed.

8. The developer shall contribute their prorated portion, not to exceed \$7,700 to the cost of the signal installation at Aiken Rd and N. English Station Rd. This shall be paid within 30 days of the request by the Director of Louisville Metro Public Works.
9. Prior to any site disturbance, the cemetery boundaries shall be defined by a qualified archeologist and documentation of the cemetery boundaries shall be submitted to Planning and Design staff. After the boundary has been approved, all buildings and structures shall be set back at least 30' from the cemetery boundary. The buffer shall be delineated with the installation of temporary fencing during construction. As soon as practical, the owner/developer is required to erect a new permanent fence made of material compatible with the character of the existing cemetery and the surrounding residences.