

# Planning Commission Staff Report

November 18, 2021



<b>Case No:</b>	21-ZONE-0112
<b>Project Name:</b>	The Willard
<b>Location:</b>	9500 Golders Green Circle
<b>Owner(s):</b>	Preston Crossing, LLC
<b>Applicant:</b>	Preston Crossing, LLC
<b>Representative(s):</b>	Bardenwerper, Talbott, & Roberts, PLLC; Mindel Scott
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	24 – Madonna Flood
<b>Case Manager:</b>	Joel P. Dock, AICP, Planning Coordinator

## REQUEST(S)

- **Change-in-Zoning** from R-6 to R-7, multi-family
- **Revised Detailed District Development Plan**

## CASE SUMMARY

A change in zoning is requested to rectify a construction error leading to the development exceeding the maximum density permitted. 164 dwelling units were approved on plans prior to submittal of this zoning change request; 166 units were constructed. The error took place within a structure that was shown as providing 28 units; 30 units were constructed. The maximum density within the current R-6 district is 17.42 dwelling per acre. The existing density on the property is 17.58 dwellings per acre. R-7 allows for a maximum density of 34.8 dwellings per acre or a total of 328 dwellings.

## Associated Cases

9-44-04: Change in zoning from R-5A to R-6 (2004)  
16553: RDDDP for 160 dwelling units (2012)  
15DEVPLAN1115: RDDDP for 164 dwelling units (2015)  
16DEVPLAN1136: RDDDP for 164 dwelling units (2016)

## STAFF FINDING

The change in zoning conforms to the land use and development policies of Plan 2040. The proposed zoning district when considered based on the location of the subject site and current built conditions provide conformance with Plan 2040. The site is near major employment and activity centers providing a range of goods services. Transportation Infrastructure in the area allows for an expansion of transit service to serve the site should additional units be provided, as well as nearby populations, employers, and retailers. Both the current and proposed district provide for housing choice and affordability.

## **STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES**

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 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 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, incomes and abilities. 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, 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 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, bicycle and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to support physical activity for all users and 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 district is located near Preston Highway, a major arterial roadway which provides access to the interstate and transit. However, TARC route #28 currently terminates north of I-265 at St. Rita Drive. Employment centers are nearby, and goods and services are also nearby to support transit-oriented development and an efficient public transportation system. Infrastructure supports an expansion of Transit. Considering the current limitations that may be imposed by the built-out

conditions on the subject site, the roadway network appears sufficient to handle an increase in traffic potentially resulting from the R-7 density. The district encourages a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. An increase in density from the built conditions will require a review of any needed improvements

Landscaping requirements between the current and proposed district are equivalent and the site is currently developed just above the R-6 density. Future development would be limited without a significant redevelopment of the site. Tree canopy and landscaping would be reconsidered at the time of redevelopment. Additional height is permitted (maximum 45' with exceptions) in the R-7 district but that would require additional stories to be added to current structures where many are 3-stories or 35'. The additional height permitted would be located adjacent to an activity center where it would still remain as a transition between higher and lower intensity/density zones. The current development also appears to avoid areas where wet or highly permeable soils, severe, steep or unstable slopes are present. Any expansion of the site where additional buildings could be proposed might be in this area at the rear where tree canopy, drainage features, and a stream are present. A review of future development must consider the impact on this area of the development site and the impacts of added impervious surfaces. Any future development requires review by agencies and is subject to the standard of review, including a comprehensive plan analysis.

The current and proposed district both promote housing to support aging in place as those aging may remain in their communities as they move from single-family homes but remain nearby to activities. Both districts also support mixed-income and mixed-use development that is connected to the neighborhood and surrounding area. The proposed zoning district allows for 2 dwelling units built in error to remain which eliminates potential displacement. Any added density may be limited by the built environment. It would remain connected to the neighborhood.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR DETAILED DISTRICT DEVELOPMENT PLAN**

- 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 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 will be 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 are provided.

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

STAFF: Outdoor amenities are provided and canopy is preserved.

- 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 provisions 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 development plan is compatible with the overall site design and future use of the area as it is located in an area of transition between higher and lower intensities/densities.

- 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 with Plan 2040 and the Land Development Code. No relief has been requested and all requirements of the Land Development have been met.

**REQUIRED ACTIONS**

- **RECOMMEND** to the Louisville Metro Council that the **Change-in-Zoning** from R-6 to R-7, multi-family on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan**

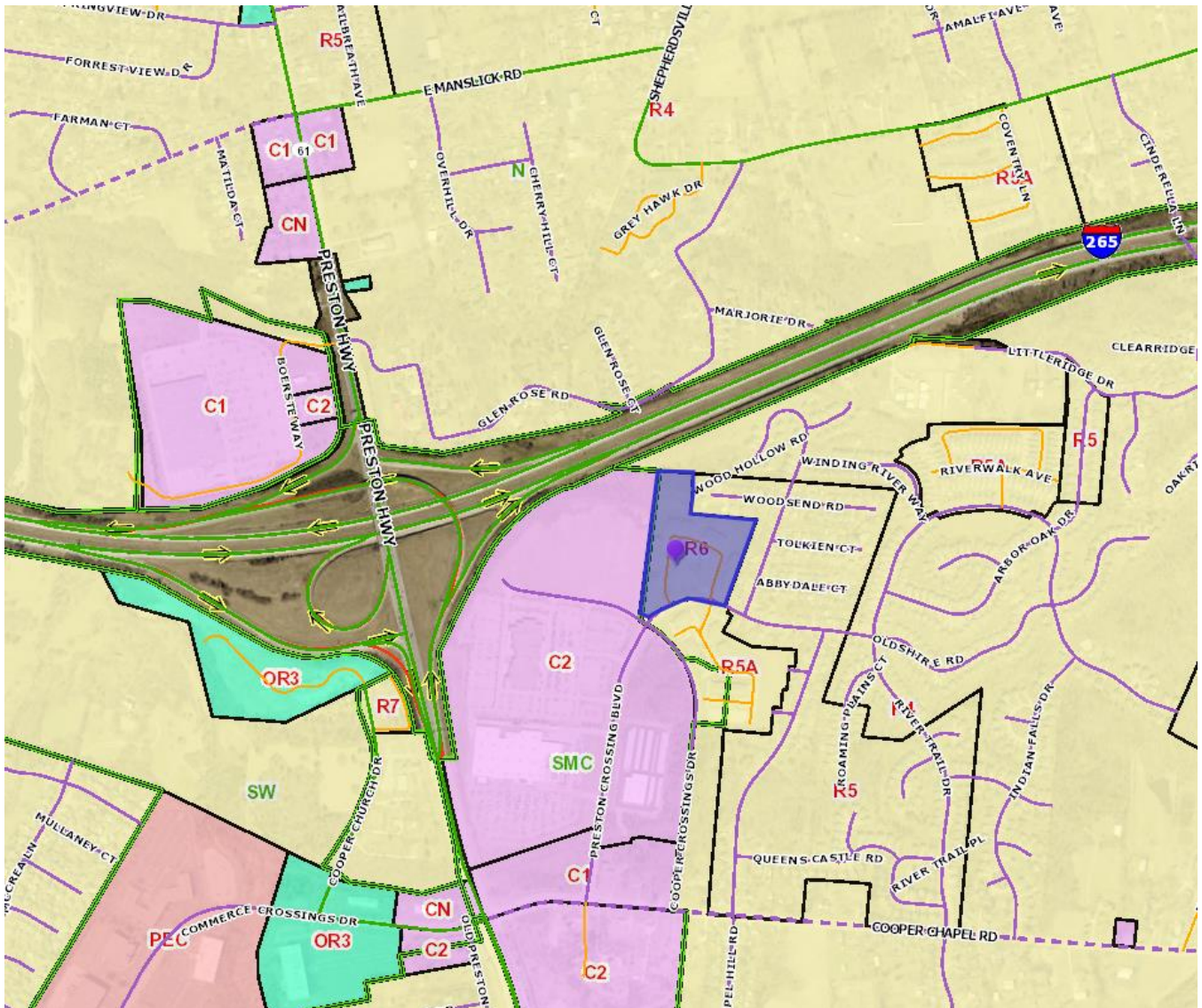
**NOTIFICATION**

Date	Purpose of Notice	Recipients
10/14/21	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 24
11/4/21	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 24
11/2/21	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

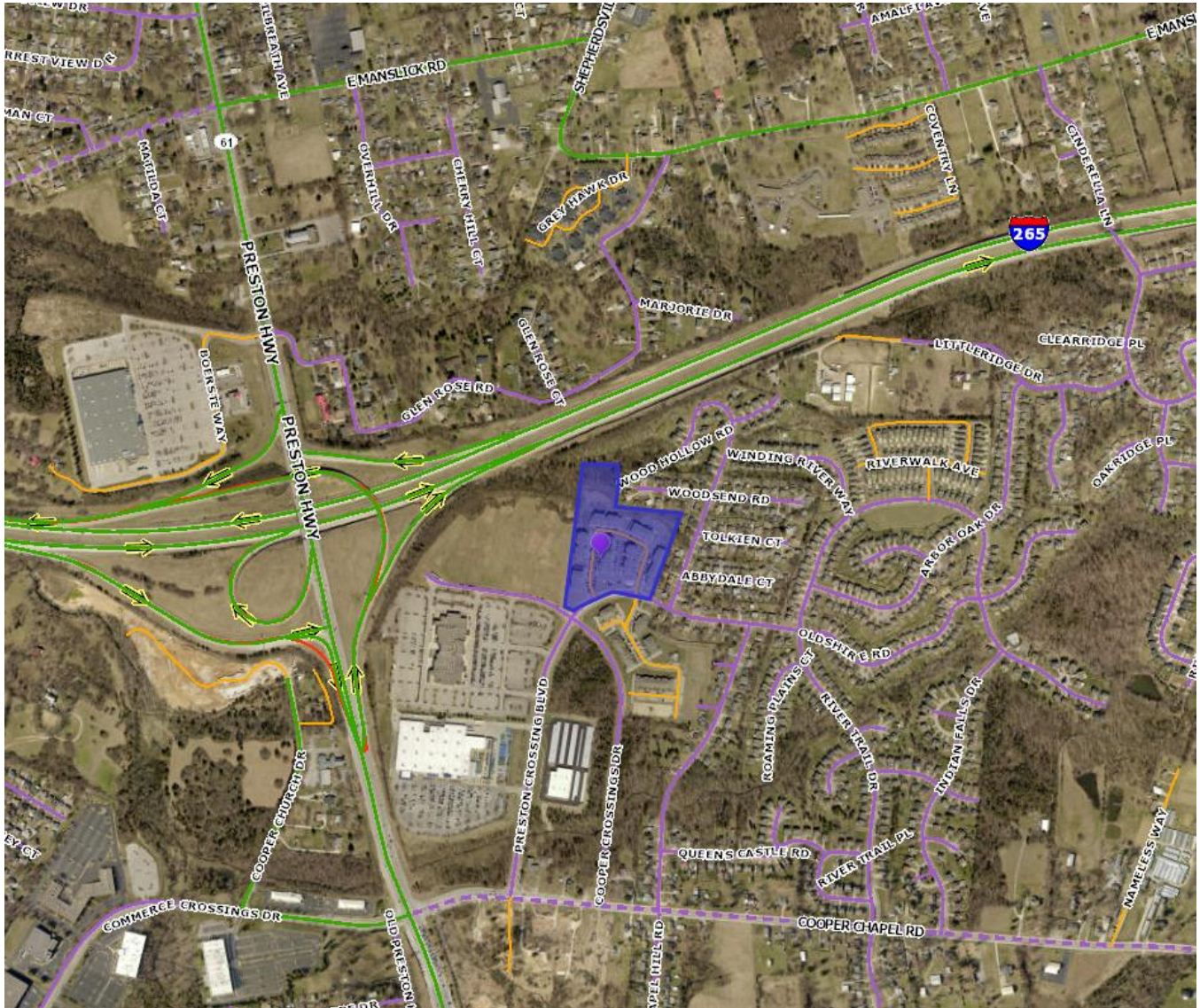
**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Staff Analysis
4. Existing Binding Elements (16DEVPLAN1136)
5. Proposed Binding Elements

1. **Zoning Map**



2. Aerial Photograph



**3. Plan 2040 Staff Analysis**

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

Neighborhood: Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Community Form	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 proposed district is located near Preston Highway, a major arterial roadway which provides access to the interstate and transit. However, TARC route #28 currently terminates north of I-265 at St. Rita Drive. Employments centers are nearby, and goods and services are also nearby. Infrastructure supports an expansion of Transit.
Land Use & Development Goal 1: Community Form	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	✓	Landscaping requirements between the current and proposed district are equivalent and the site is currently developed just above the R-6 density. Future development would be limited without a significant redevelopment of the site. Tree canopy and landscaping would be reconsidered at the time of redevelopment. Additional height is permitted (maximum 45' with exceptions) in the R-7 district but that would require additional stories to be added to current structures where many are 3-stories or 35'. The additional height permitted would be located adjacent to an activity center where it would still remain as a transition between higher and lower intensity/density zones.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 3: Community Form	<b>10.</b> 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 site is built out and current development appears to avoid areas where wet or highly permeable soils, severe, steep or unstable slopes are present. Any expansion of the site where additional buildings could be proposed might be in this area at the rear where tree canopy, drainage features, and a stream are present. A review of future development must consider the impact on this area of the development site and the impacts of added impervious surfaces.
Land Use & Development Goal 1: Mobility	<b>4.</b> 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 district is located near Preston Highway, a major arterial roadway which provides access to the interstate and transit. However, TARC route #28 currently terminates north of I-265 at St. Rita Drive. Employments centers are nearby, and goods and services are also nearby to support transit-oriented development and an efficient public transportation system. Infrastructure supports an expansion of Transit.
Land Use & Development Goal 2: Mobility	<b>4.</b> Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access from Preston Highway is through areas of higher intensity and density.
Land Use & Development Goal 3: Mobility	<b>2.</b> 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 increases the theoretical density surrounding employment centers and goods and services nearby to support transit-oriented development and an efficient public transportation system. Infrastructure supports an expansion of Transit. This encourages a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities
Land Use & Development Goal 3: Mobility	<b>5.</b> Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	Primary access to the site from Preston Highway increases demand for public transit near employment and activity centers which supports transit-oriented development.



Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 3: Mobility	<b>6.</b> Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Considering the current limitations that may be imposed by the built-out conditions on the subject site, the roadway network appears sufficient to handle in increase in traffic potentially resulting from the R-7 density.
Land Use & Development Goal 3: Mobility	<b>9.</b> 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.	✓	Considering the current limitations that may be imposed by the built-out conditions on the subject site, the roadway network appears sufficient to handle in increase in traffic potentially resulting from the R-7 density.. The district encourages a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. An increase in density from the built conditions will require a review of any needed improvements.
Land Use & Development Goal 3: Mobility	<b>10.</b> Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	An increase in density from the built conditions will require a review of any needed improvements.
Land Use & Development Goal 3: Mobility	<b>21.</b> Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No access to high speed roadways is proposed or provided.
Land Use & Development Goal 2: Community Facilities	<b>1.</b> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Utilities are available in the area to serve the development.
Land Use & Development Goal 2: Community Facilities	<b>2.</b> 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.	✓	Potable water and water for firefighting is available.
Land Use & Development Goal 2: Community Facilities	<b>3.</b> 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 review and approval will be necessary in the event that any future impervious development is added to the land.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Livability	5. Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	✓	The site is built out and current development appears to avoid sensitive areas of the environment. Any expansion of the site where additional buildings could be proposed might be in these areas at the rear where tree canopy, drainage features, and a stream are present. A review of future development must consider the impact on this area of the development site and the impacts of added impervious surfaces.
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.	✓	The site is built out and current development appears to avoid sensitive areas of the environment. MSD review and approval will be necessary if any future impervious development is added to the land. Any expansion of the site where additional buildings could be proposed might be in these areas at the rear where tree canopy, drainage features, and a stream are present. A review of future development must consider the impact on this area of the development site and the impacts of added impervious surfaces.
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.	✓	MSD review and approval will be necessary if any future impervious development is added to the land. Current development generally avoids stream courses.
Land Use & Development Goal 1: Housing	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The current and proposed district encourage a variety of housing types and styles and allow for accessory dwellings. The proposed district allows for a greater density but existing development conditions may limit revision to the site. Both districts are capable of being designed compatibly with the form district and the site currently reflects the pattern the neighborhood form.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Housing	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 current and proposed district both promote housing to support aging in place as those aging may remain in their communities as they move from single-family homes but remain nearby to activities.
Land Use & Development Goal 2: Housing	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The current and proposed zoning support mixed-income and mixed-use development that is connected to the neighborhood and surrounding area. Provisioning additional density may be limited by the built environment but would remain connected to the neighborhood.
Land Use & Development Goal 2: Housing	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 proposed district is located near Preston Highway, a major arterial roadway which provides access to the interstate and transit. However, TARC route #28 currently terminates north of I-265 at St. Rita Drive. Employments centers are nearby, and goods and services are also nearby to support transit-oriented development and an efficient public transportation system. Infrastructure supports an expansion of Transit
Land Use & Development Goal 3: Housing	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The current and proposed districts promote fair and affordable housing at dispersed locations throughout Louisville Metro by allowing for increased density near major transportation, activity, and employment centers.
Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The proposed zoning district allows for 2 dwelling units built in error to remain. The built conditions of the site may limit future development and any future development of the subject site will require review by agencies and be subject to the standard of review, including a comprehensive plan analysis.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 3: Housing	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 current and proposed districts allow for 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 site is built for multi-family housing in 2- and 3-story structures.

#### 4. Existing 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. ~~The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of tracts or lots than originally approved shall occur without approval of the Planning Commission.~~
3. ~~Use of the subject site shall be limited to Multi-Family Residential. There shall be no other use of the property unless prior approval is obtained from the Planning Commission or the LD&T Committee. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The Planning Commission/LD&T Committee may require a public hearing on the request to amend this binding element.~~
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, site disturbance, or demolition 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.~~
  - c. ~~A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.~~
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 October 10, 2013 Land Development and Transportation meeting.
10. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.

All plans setting out tree preservation areas must contain the following notes:

1. Tree preservation areas (TPAs and TCPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Tree in these areas may be removed during construction of homes or buildings on individual lots.
2. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
3. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
4. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
5. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.
11. The owner/applicant shall install landscaping and a fence per the Exhibit provided at the April 5, 2012 Planning Commission Public Hearing.

## 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. 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. Within 6-months of final action by the Louisville Metro Council:
  - a. A revised plan for screening and landscaping (buffering/landscaping) shall be submitted for review and approval. Any changes made thereon shall be implemented in a during the first planting season following approval and shall be maintained thereafter.
  - b. A revised Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved.
  - c. Any improvements and/or revisions to any open spaces, new or existing, as shown on the approved development plan shall be made within 6-months of final action by Louisville Metro Council.
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. 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.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 10, 2013 Land Development and Transportation meeting.