

# Planning Commission Staff Report

November 19, 2020



<b>Case No:</b>	20-ZONE-0069
<b>Project Name:</b>	Bohannon Property
<b>Location:</b>	13915, 14201, & 15012 Bohannon Ave
<b>Owner(s):</b>	LDG Land Holdings, LLC
<b>Applicant:</b>	LDG Land Holdings, LLC
<b>Representative(s):</b>	Dinsmore & Shohl, LLP
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	14 – Cindi Fowler
<b>Case Manager:</b>	Joel P. Dock, AICP, Planner II

## REQUEST(S)

- **Change-in-Zoning** from R-4 & M-2 to EZ-1
- **Change-in-Form** from Neighborhood to Suburban Workplace
- **Variance** from Land Development Code (LDC), section 4.8.3 to encroach upon the 100' protected waterway (Weavers Run)
- **Waiver** of LDC, section 10.2 to encroach upon 50' landscape buffer between EZ-1 and R-4
- **Detailed District Development Plan**

## CASE SUMMARY

The proposal calls for a change in zoning to facilitate the development of 830,000 sq. ft. of industrial warehousing. The subject site is located adjacent to Riverport Phase 5 on the east side of Dixie Highway and across Weavers Run stream. Access to the site is proposed through Riverport Phase 5 via Lewis and Randy Coe Lane. No access to Bohannon Avenue is proposed or permitted for the development site.

## STAFF FINDING

The proposed change in zoning and form district conform to the land use and development policies of Plan 2040. While the proposal would result in an expansion of industrial uses in a residentially zoned area, the site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form and all vehicular access to the site, except for emergency vehicles, will be routed through Riverport and eventually connect to Dixie Highway, a major arterial roadway. Access to Bohannon Avenue will be prohibited and secured by an emergency gate.

The variance, waiver, and detailed plan are adequately justified based on staff's analysis contained in the standard of review.

## TECHNICAL REVIEW

- Preliminary approval has been received from Louisville MSD and Transportation Planning
- The waiver encroachment is the result of providing access to the parking area nearest building 3 and the elimination of access to Bohannon Avenue.
- No access will be permitted to Bohannon Avenue. An emergency gate is proposed to restrict this access point, see binding element #8.

- PRP fire had no objections to the closure. Major Allen Richard with PRP Fire provided the following comment:

“We have reviewed the gate request and see no issues with it. We would like for the gate to have some sort of signage for no parking, emergency access only. The gate will need some type of locking device that can be cut or removed in case of emergency. If it’s going to be an electronic gate, then we will need a pass code to add to our Active911 system.”

## **STANDARD OF REVIEW FOR ZONING AND FORM 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 AND FORM DISTRICT**

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 **currently** 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, 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 existing form is inconsistent with existing M-2, industrial district on portions of the site that are previously developed but contained within this form district. Under the existing form district, the only appropriate use would appear to be residential or agricultural as any other use would increase the intensity of use along Bohannon Ave, a local roadway containing residential property. The current form is also not appropriate given its adjacency to the Suburban Workplace form and industrial zoning districts which access Dixie Highway. These areas will be connected to the proposal and access restricted to Bohannon Avenue. Adequate transitions between the Workplace and Neighborhood form will be provided as the development expands the industrial use to residential zoned areas.

The site is **proposed** to be 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 proposal would result in an expansion of industrial uses in a residential area as the proposed district expands the existing industrial zoning district north towards a residential neighborhood and borders one residential property on three sides. However, the site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form and all vehicular, except for emergency vehicles, will be restricted to access through the adjacent industrial development and eventually connect to Dixie Highway, a major arterial roadway. Dixie Highway provides for transit access to population and employment centers. No access through local residential roadways will be provided to the development site. Transitions in the form of landscape buffers and screening will be also provided.

Impacts of the industrial use on residential users will be reduced by eliminating existing access to Bohannon Avenue. The site is in area of low population density and not immediately adjacent to larger residential populations. Potentially hazardous or nuisance uses as defined by the Land Development Code will require conditional use permit to use the property.

Environmental features will be disturbed but mitigated. All restoration improvements required by the LDC to stream banks as a result of disturbance will be provided. MSD, KDOW and USACE review and approval will be required to be received prior to site disturbance to minimize environmental degradation of sensitive features.

## **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 as existing encroachments are present in this area and all streambank restoration required by the Land Development Code 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 encroachments of an existing industrial users are present in the area of the new drive lane.

- (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 stream bank restoration will be required in disturbed areas to accommodate the proposal.

- (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 roadway is consistent with the existing impervious surfaces.

### **ADDITIONAL CONSIDERATIONS (4.8.4.B – Protected Waterway):**

1. The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area:

STAFF: The requirements do not represent an extreme hardship as the encroachments could be removed and alternative access within the site to its point of connection to Lewis Lane could be provided.

2. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use:

STAFF: The proposed use can be accommodated without encroachment into the buffer. Without a redesign of the development, however, its omission would result in heavy-trucks sharing access through loading areas.

3. The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction:

STAFF: Binding elements have been added to the zoning change request that require further require the enforcement of stream bank restoration and management.

4. Approval of the variance will not result in a reduction in water quality.

STAFF: MSD, KDOW and USACE review and approval will be received prior to site disturbance to minimize environmental degradation of sensitive features.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

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

STAFF: The waiver will not adversely affect adjacent property owners as all required plantings and screening will be required and the use of the encroachment will be for passenger vehicles.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The proposed development will provide all required planting materials to protect the residence from visual intrusions.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as the encroachments can be removed through a redesign of the development site. Encroachments in this location are primarily the result of restricting access To Bohannon Avenue.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as all required planting and screening will be provided and the area is limited to passenger vehicles.

## **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: Impacts upon 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 mitigated or avoided where necessary.

- 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 provided through Riverport Phase 5 (Lewis/Randy Coe Lane) to Dixie Highway, an arterial roadway, providing public transit.

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

STAFF: The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided.

- 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 form district's pattern of development as the proposed development generally complies with the Land Development Code, except for the requested relief.

- 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 as access to a local residential roadway is restricted, connectivity to arterial roadway with transit is provided, and the site is adjacent to similar intensities and future users.

## **REQUIRED ACTIONS**

- **RECOMMEND** to the Louisville Metro Council that the **Change-in-Zoning** from R-4 & M-2 to EZ-1 on property described in the attached legal description be **APPROVED or DENIED**
- **RECOMMEND** to the Louisville Metro Council that the **Change-in-form** from Neighborhood to Suburban Workplace on property described in the attached legal description be **APPROVED or DENIED**
- **APPROVE or DENY** the **Variance** from Land Development Code (LDC), section 4.8.3 to encroach upon the 100' protected waterway (Weavers Run)
- **APPROVE or DENY** the **Waiver** of LDC, section 10.2 to encroach upon 50' landscape buffer between EZ-1 and R-4
- **APPROVE or DENY** the **Detailed District Development Plan**

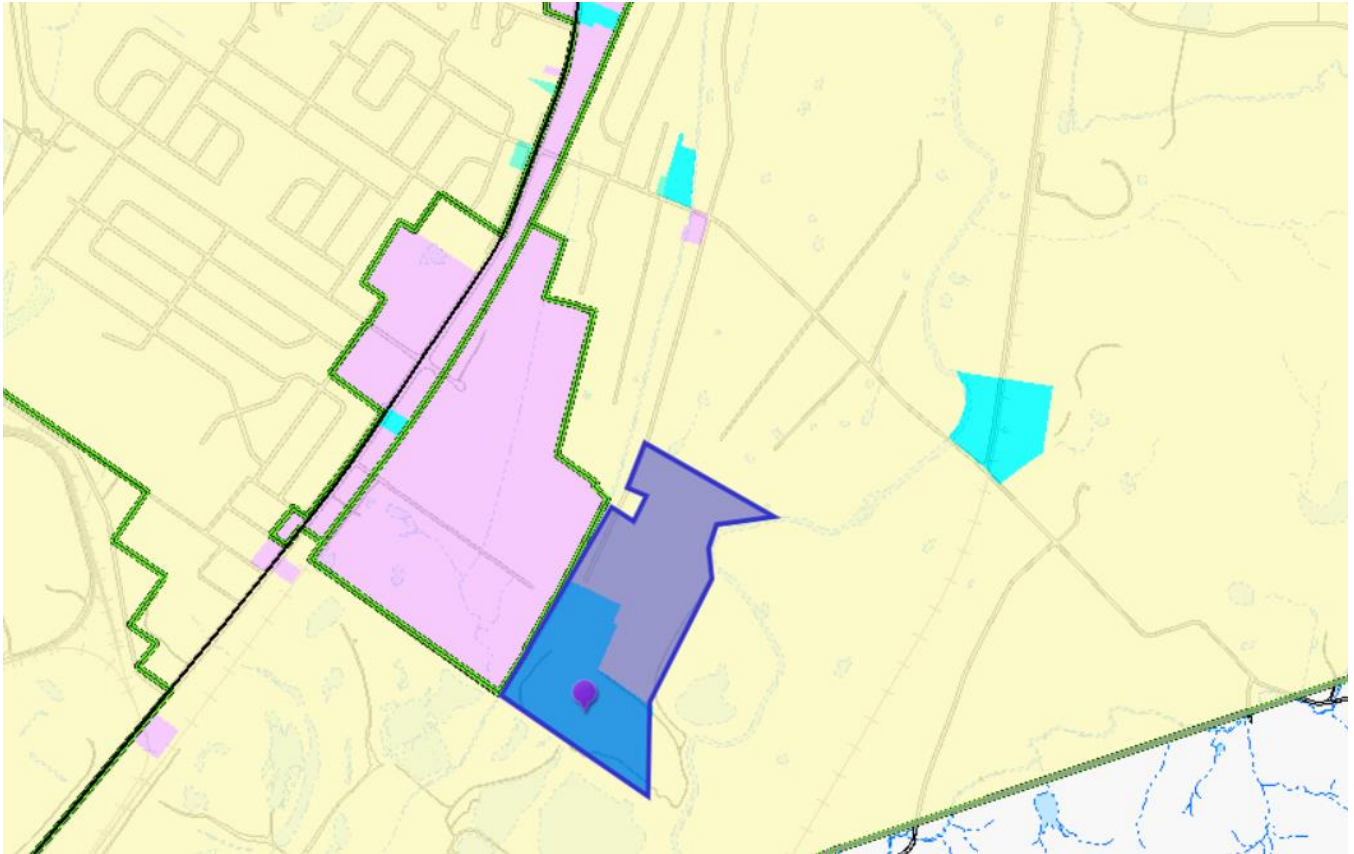
## **NOTIFICATION**

Date	Purpose of Notice	Recipients
10/7/20	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 14
11/6/20	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 14
11/3/20	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 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

#### Suburban Workplace: Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	6. Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The proposal would result in an expansion of industrial uses in a residential area as the proposed district expands the existing industrial zoning district north towards a residential neighborhood and borders one residential property on three sides. However, the site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form and all vehicular, except for emergency vehicles, will be restricted to access through the adjacent industrial development and eventually connect to Dixie Highway, a major arterial roadway. No access though local residential roadways will be provided to the development site. Transitions in the form of landscape buffers and screening will be provided.
Community Form: Goal 1	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form and all vehicular, except for emergency vehicles, will be restricted to access through the adjacent industrial development and eventually connect to Dixie Highway, a major arterial roadway. No access though local residential roadways will be provided to the development site. Dixie Highway provides for transit access to population and employments centers.
Community Form: Goal 1	8. Encourage industries to locate in workplace Form Districts or in areas readily served by infrastructure and transportation facilities, including transit, rather than isolated industrial sites.	✓	The site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form. The site can be served through roadways on this adjacent site and will not be isolated form industrial users.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	15. When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	✓	Impacts of the industrial use on residential users will be reduced though restrictive access though adjacent industrial areas. The site is in area of low population density and not immediately adjacent to larger residential populations.
Community Form: Goal 1	16. Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	✓	Impacts of the industrial use on residential users will be reduced though restrictive access though adjacent industrial areas. The site is in area of low population density and not immediately adjacent to larger residential populations.
Community Form: Goal 1	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	Adverse impacts of traffic on nearby residential roads will be reduced by restricting access to Bohannon Ave.
Community Form: Goal 1	18. Mitigate adverse impacts of noise from proposed development on existing communities.	+/-	The adverse impacts of noise on adjacent uses should be mitigated in the future in the event a user may disturb adjacent residential users with noises or vibrations, specifically for occupants, if any, of the residential property that is bordered on 3 sides by the proposed development.
Community Form: Goal 1	21. Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	✓	Potentially hazardous or nuisances uses as defined by the Land Development Code will require conditional use permit to use the property.
Community Form: Goal 3	9. Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	The subject property contains environmental features that will be disturbed. All restoration improvements required by the LDC to stream banks as a result of disturbance will be provided.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 3	<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.	✓	MSD, KDOW and USACE review and approval will be received prior to site disturbance to minimize environmental degradation of sensitive features.
Community Form: Goal 3	<b>12.</b> 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.	✓	Measures to protect health, safety and welfare of future users of the development will be provided as construction plan approval will be required prior to disturbance.
Mobility: Goal 3	<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.	✓	The proposal will connect with adjacent uses of similar intensities via roadways to Dixie Highway which provides for transit and bike facilities. Pedestrian connectivity will be provided to public walks proposed or existing.
Mobility: Goal 3	<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.	✓	All improvements necessary to facilitate appropriate levels and points of access will be made. All vehicular access, except for emergency vehicles, will be prohibited from Bohannon
Mobility: Goal 3	<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.	✓	The proposal eliminates the use of Bohannon Avenue for future industrial traffic. This roadway is inadequate to serve an industrial user.
Mobility: Goal 3	<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.	✓	The site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form and all vehicular, except for emergency vehicles, will be restricted to access through the adjacent industrial development and eventually connect to Dixie Highway, a major arterial roadway. No access through local residential roadways will be provided to the development site. Dixie Highway provides for transit access to population and employment centers

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	All utilities will be provided as required.
Community Facilities: Goal 2	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	All utilities will be provided as required.
Community Facilities: Goal 2	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD review and approval has been received.
Economic Development: Goal 1	1. Limit land uses in workplace Form Districts to compatible uses that meet the needs of the industrial subdivision or workplace district and their employees.	✓	The proposed district is compatible with adjacent industrial land within the Workplace form and does not result in increased traffic on nearby local residential roadways.
Economic Development: Goal 1	2. Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	✓	The proposed district is compatible with adjacent proposed Riverport, Phase 5.
Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	✓	The site is adjacent to an appropriately located industrial site (Riverport Phase 5) within the workplace form and all vehicular, except for emergency vehicles, will be restricted to access through the adjacent industrial development and eventually connect to Dixie Highway, a major arterial roadway. No access through local residential roadways will be provided to the development site. Dixie Highway provides for transit access to population and employments centers
Livability: Goal 1	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	MSD, KDOW and USACE review and approval will be received prior to site disturbance to minimize environmental degradation of sensitive features.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Livability: Goal 1	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	MSD review and approval has been received.

**4. Proposed Binding Elements**

1. The site shall be maintained in accordance with all applicable sections of the Land Development Code (LDC) and agreed-upon binding elements unless amended pursuant to the LDC. Amendment of any binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any amendments not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit is requested, including but not limited to permits for building, parking lot, change of use, site disturbance, alteration or demolition:
  - 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 Department of Transportation, Bureau of Highways for any work within the state right-of-way.
  - c. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
  - d. 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
  - e. Portions of Bohannon Avenue shown on the approved development plan to be closed shall be reviewed by the Planning Commission and recorded prior to requesting a permit
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy unless specifically waived by the Planning Commission.
6. The applicant, developer or property owner shall provide a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.

7. No overnight idling within 200 ft. of residential property lines.
8. No access shall be permitted to Bohannon Avenue, except for emergency vehicles and pedestrians.
9. At the time of development, the following restoration standards shall be met:
  - a. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
  - b. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless MSD determines such vegetation would be inadequate to re-stabilize the bank. In instances where the MSD determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the MSD shall be utilized.
  - c. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.
10. Tree and Vegetation Removal.
  - a. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #9 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
  - b. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project.