

# Planning Commission Staff Report

December 1, 2022



<b>Case No:</b>	21-ZONE-0125
<b>Project Name:</b>	Commerce Crossings II
<b>Location:</b>	9710 Preston Highway; 9900 Cooper Church Dr; 5115, 5121, & 5141 Commerce Crossings Dr; 9701 Cooper Church Drive
<b>Owner(s):</b>	Commerce Crossings, LLC; Alvin J Slack, Jr
<b>Applicant:</b>	Capstone Realty
<b>Representative(s):</b>	Dinsmore – Cliff Ashburner
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	13 – Mark Fox 24 – Madonna Flood
<b>Case Manager:</b>	Joel P. Dock, AICP, Planning Coordinator

## REQUEST(S)

- **Change-in-Zoning** from R-4, OR-3, & PEC to R-6, OR-3, & PEC
- **Variances:**
  - **Variances** from Land Development Code (LDC), Section 4.8 to allow encroachments into the protected waterway at 4 locations throughout the development and reduce the waterways to the following dimensions:
    1. 100' to 65' (labeled on development plan with 'V1' – lot 4)
    2. 100' to 65' ('V2' – road encroachment between lots 3 & 5)
    3. 100' to 54' ('V3 – lot 2)
    4. 100' to 68' ('V4 – lot 1)
  - **Variances** from LDC, Section 5.3.4.D.2 (Table 5.3.1) to allow for the height of buildings at the street side to exceed the maximum height of 35' ('V5' & 'V6')
- **Revised/Detailed & District Development/Major Preliminary Subdivision Plan** with review of stream crossings in accordance with LDC 4.8.6.J

## CASE SUMMARY

The subject property is located on the south side of Interstate-265 between Preston Highway and Interstate-65. It contains 82 acres of land; a portion of this area is listed on the National Register of Historic Places – Fishpool Plantation. The area of the proposal is wholly contained within the suburban workplace form district. It abuts single- and multi-family residential, as well as employment uses that are within the existing Commerce Crossings business park. The business park spans the length of Commerce Crossings Drive and includes Interchange Drive.

The proposed development includes areas for multi-family, office, and industrial development and zoning districts. The industrial component will be accessed from a private roadway connecting to Commerce Crossings Drive. The multi-family development is accessible via Cooper Church Drive and Commerce Crossing Drive.

## STAFF FINDING

The proposed zoning districts are in conformance with the land use and development policies of Plan 2040. The development plan/major subdivision with stream buffer crossing and associated variances appear to be adequately justified based on staff's analysis contained in the standard of review.

## **TECHINICAL REVIEW**

- Associated Cases:
  1. 9-32-97: Change in zoning from R-4 to PEC (approved by Planning Commission 7/17/97) – Lot 5 and office area of the proposed development plan are subject to binding elements of this docket. General Plan elements will remain in effect. Detailed plan elements will be abandoned and replaced in this area.
  2. B-196-04: Encroachments into the stream buffer (Approved by BOZA 10/18/04)
- The applicant has received a variance from the Louisville MSD Floodplain Board to relocate an intermittent stream on lot 1, see note 13 on the development plan.
- The private roadway spans the protected waterway as it connects to lot 1. The proposed roadway from the multi-family dwelling to Commerce Crossing Drive also crosses the protected waterway. Each of these crossings is subject to review and the Planning Commission’s approval under LDC, Section 4.8.6.J. A review has been provided in the standard of review for detailed district development plans, item ‘a.’ See also binding element 11.

## **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 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 proposed zoning district does not expand non-residential uses into residential areas as the site is vacant and located within the suburban workplace form district which is a form characterized by

predominately industrial and office uses, and the proposed zoning district supports the intended pattern of development. Demand and infrastructure are in place to support industrial growth within the form and an isolated center is not being created as the district expands the existing employment center known as Commerce Crossings. The proposed PEC district limits potential industrial uses at the M-2 intensity level which eliminates some of the more noxious and offensive uses. Disadvantaged or historically marginalized communities will not be disproportionately impacted by the proposed industrial development.

Natural features on the site will be conserved. While encroachments into buffers result, the watercourses of protected waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. The historic resources on the subject property will be reviewed, documented, and protected, while also developing the land. Features, including sinkholes and flood prone areas have been reviewed and documented. Louisville MSD has approved the preliminary plan and will review all construction plans prior to development to minimize negative development impact on water courses.

Historic resources will be preserved in the existing residential zoning district. Documentation of resources will be required prior to disturbance.

The Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center. Housing is located nearby, and pedestrian access is available from these areas. Heavy trucks will not be able to traverse through residential neighborhoods as no vehicular connection is available to allow for such movement.

The multi-family district is a continuation of the existing development to the immediate north and connectivity is provided and extended to Commerce Crossing Drive. No displacement will occur because of this development and much more housing will be provided because of the proposed district.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES (Waterway Buffers)**

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

STAFF: The requested variances will not adversely affect public health, safety or welfare as encroachments being made allow for proper access and circulation (V1/V2) or are in areas where there will also be disturbance related to floodplain compensation or sanitary sewer lines/easements (V3/V4). The encroachment does not impede the flow of water or any potential use of the waterway. Appropriate crossings will be made.

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

STAFF: The requested variances will not alter the essential character of the general vicinity as the intended form of this area is for employment and industrial uses which are accommodating the waterway and historic resources on the subject property while also developing the land.

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

STAFF: The requested variances will not cause a hazard or nuisance to the public as the waterways are maintained on private property. Louisville MSD, KDOW and ACOE will be

required to approve all construction plans prior to development to ensure water quality in compliance with applicable standards of each reviewing agency.

- (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.

**ADDITIONAL CONSIDERATIONS (4.8.4.B.1):**

- A. 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 granting of the variances does not represent an extreme hardship such that minimal or no reasonable economic use of the land is unavailable. Except for the variance for the roadway encroaching into the buffer between lots 3 & 5, each of the variances could otherwise be avoided by reducing or reconfiguring the development on each site.

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

STAFF: The encroachments are the minimum necessary to accommodate the development as specifically proposed by the applicant.

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: The applicant shall be required to comply with the standards of the Land Development Code as it relates to restoration (4.8.6.K), water quality monitoring (4.8.6.L), and tree and vegetation removal (4.8.6.M).

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

STAFF: Louisville MSD, KDOW and ACOE will be required to approve all construction plans prior to development to ensure water quality in compliance with applicable standards of each reviewing agency.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE (Height)**

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

STAFF: The requested variances will not adversely affect public health, safety or welfare as the height does not impede the safe movement of pedestrians or vehicles.

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

STAFF: The requested variances will not alter the essential character of the general vicinity as the height proposed is the result of topographical changes that place the height on the street

side above the maximum. The development is a continuation of the pattern of development that is present to the immediate north of the subject site.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public as the height does not impede the safe movement of pedestrians or vehicles.

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

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal does not cause a hazard or nuisance or result in adverse impacts to public health, safety, or welfare.

#### ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the height proposed is the result of topographical changes that place the height on the street side above the maximum.

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 the reasonable use of the land as relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified.

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

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred.

#### 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. While encroachments into buffers are being made, the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. The historic resources on the subject property will be reviewed, documented, and protected, while also developing the land. Two roadways perpendicularly

cross protected waterways to provide necessary access with the least disturbance possible from necessary construction activity to accommodate the proposal. The applicant will be required to restore any disturbance of the Buffer Area and protected waterway by re-grading and re-vegetation in the areas of the crossings. Binding Elements have been included to ensure that historic and environmental resources are properly documented, conserved, and restored as required by the Land Development Code.

- 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. The roads within the development are private roadways. Sidewalks and connections for pedestrians are provided throughout. The Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center.

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

STAFF: Open space to meet the needs of the development is 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 provisions of adequate drainage facilities on the subject site to prevent drainage problems from occurring on the subject site or within the community. Louisville MSD, KDOW and ACOE will be required to approve all construction plans prior to development to ensure water quality in compliance with applicable standards of each reviewing agency.

- 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 proposed development is compatible with the intended development pattern of the form district. No variances or waivers have been requested to relief standards that reduce setbacks or buffers adjacent to residential uses or increase the height of industrial development adjacent to residential.

- 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 the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified.

**REQUIRED ACTIONS**

- **RECOMMEND** to the Louisville Metro Council that the **Change-in-Zoning** from R-4, OR-3, & PEC to R-6, OR-3, & PEC on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE** or **DENY** the requested **Variations** from Land Development Code (LDC), Section 4.8 to allow encroachments into the protected waterway at 4 locations throughout the development and reduce the waterways to the following dimensions:
  - 100’ to 65’ (labeled on development plan with ‘V1’ – lot 4)
  - 100’ to 65’ (‘V2’ – road encroachment between lots 3 & 5)
  - 100’ to 54’ (‘V3’ – lot 2)
  - 100’ to 68’ (‘V4’ – lot 1)
- **APPROVE** or **DENY** the **Variations** from LDC, Section 5.3.4.D.2 (Table 5.3.1) to allow for the height of buildings at the street side to exceed the maximum height of 35’ (‘V5’ & ‘V6’)
- **APPROVE** or **DENY** the **Revised/Detailed & District Development/Major Preliminary Subdivision Plan** with review of stream crossings in accordance with LDC 4.8.6.J

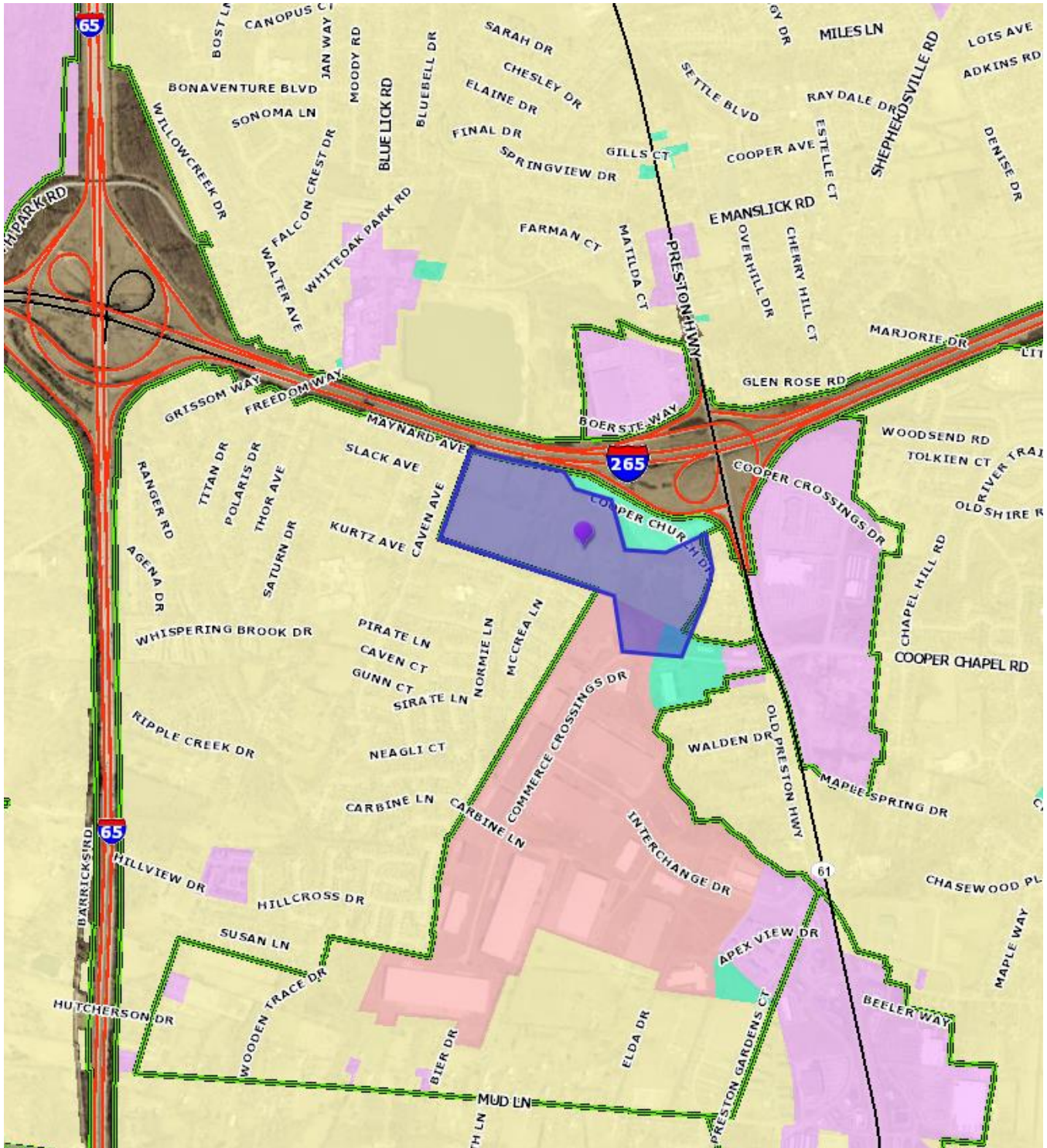
**NOTIFICATION**

Date	Purpose of Notice	Recipients
4/18/22 10/13/22	Hearing before LD&T (4/28/22) Hearing before LD&T (10/27/22)	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 13 & 24
11/9/22	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 13 & 24
11/15/22	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

**ATTACHMENTS**

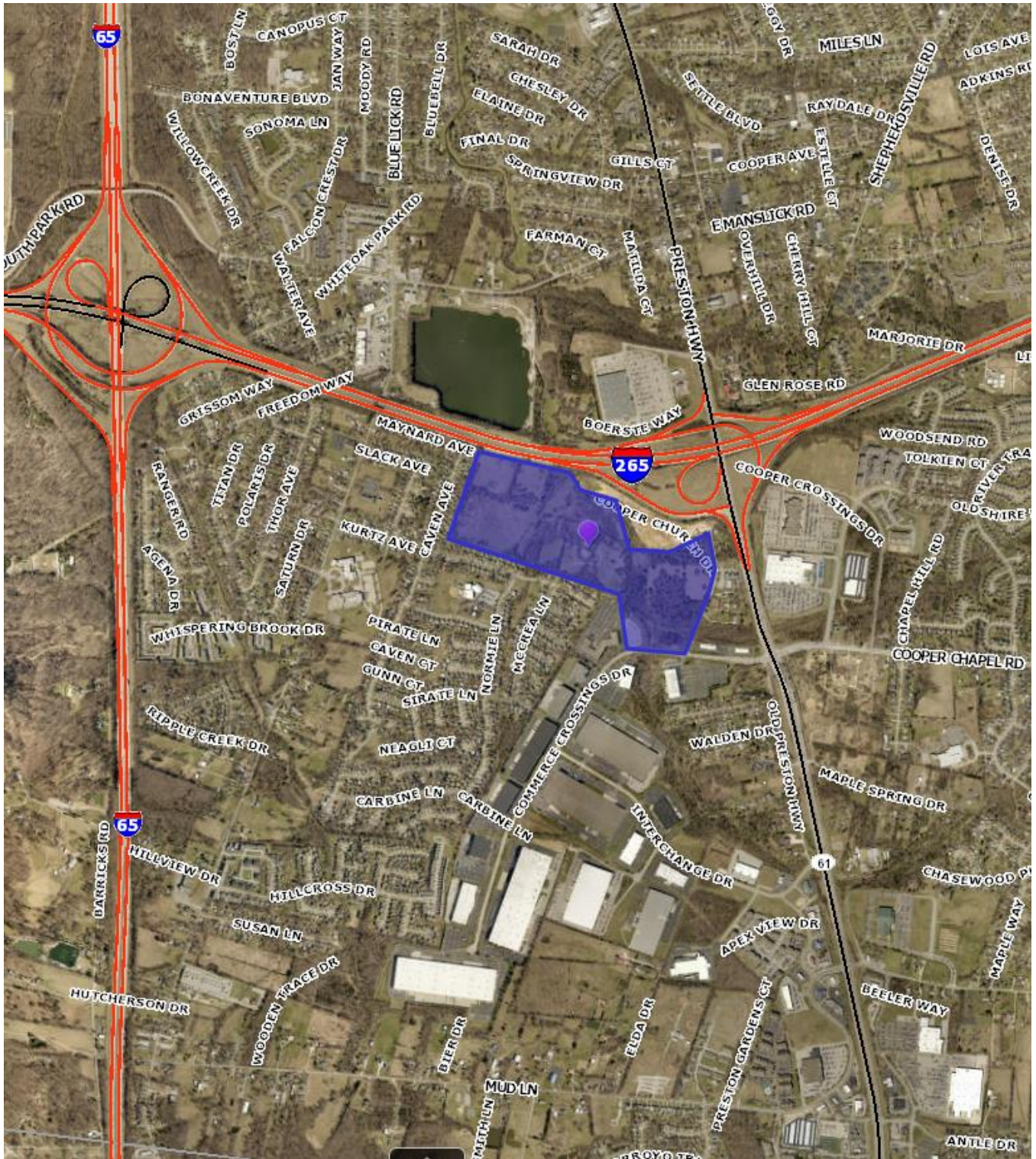
1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Staff Analysis
4. Existing Binding Elements
5. Proposed Binding Elements

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

#### 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 proposed zoning district does not expand non-residential uses into residential areas as the site is vacant and located within the suburban workplace form district which is a form characterized by predominately industrial and office uses, and the proposed zoning district supports the intended pattern of development.
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 proposed district is appropriately located within the SW form where demand and infrastructure are in place to support industrial growth within the form.
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 proposal is in a workplace form readily served by infrastructure and capable of being served by transit. An isolated center is not being created. The district extends the existing employment center known as Commerce Crossings.
Community Form: Goal 1	15. When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	✓	The proposed PEC district limits potential industrial uses at the M-2 intensity level which eliminates some of the more noxious and offensive uses. Disadvantaged or historically marginalized communities will not be disproportionately impacted.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	<b>16.</b> Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	✓	The proposed PEC district limits potential industrial uses at the M-2 intensity level which eliminates many of the more noxious and offensive uses.
Community Form: Goal 1	<b>17.</b> Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	Primary access to the site will be obtained through areas of similar intensity and from major roadways and transit corridors.
Community Form: Goal 1	<b>18.</b> Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The proposed zoning district does not allow for M-3 uses which might introduce noxious uses on the fringe of the workplace form where residents are located nearby.
Community Form: Goal 1	<b>21.</b> Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	✓	The proposed zoning district does not allow for M-3 uses which might introduce noxious uses on the fringe of the workplace form where residents are located nearby. Any hazardous use defined by the LDC will require a conditional use permit, if allowed in the PEC district.
Community Form: Goal 2	<b>1.</b> Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The proposed districts have been appropriately located in the workplace form and in areas where density and intensity are supported given the application of required buffers.
Community Form: Goal 2	<b>6.</b> Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The zoning district proposed occupy most of the land while also preserving historic resources as residential to ensure continue protection.
Community Form: Goal 2	<b>7.</b> Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The PEC district allows for a variety of office and employment uses that support the appropriate growth of the existing employment center known as Commerce Crossings.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 2: Community Form	8. Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	The proposed residential district is appropriately located in an area of employment and commercial activity capable of being served by transit and continues a pattern of development that is present to the north on Cooper Church Road.
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.	✓	Natural features on the site will be conserved. While encroachments into buffers result , the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. The historic resources on the subject property will be reviewed, documented, and protected, while also developing the land.
Community Form: Goal 3	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	Natural features on the site will be conserved. While encroachments into buffers result , the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. The historic resources on the subject property will be reviewed, documented, and protected, while also developing the land.
Community Form: Goal 3	12. When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	✓	Features, including sinkholes and flood prone areas have been reviewed and documented. Louisville MSD has approved the preliminary plan and will review all construction plans prior to development to minimize negative development impact on water courses.
Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	✓	Historic resources will be preserved in the existing residential zoning district. Documentation of resources will be required prior to disturbance.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	Historic resources will be preserved in the existing residential zoning district. Documentation of resources will be required prior to disturbance. Natural elements will be maintained while also accommodating development.
Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center. Housing is located nearby and pedestrian access is available from these areas.
Mobility: Goal 3	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center.
Mobility: Goal 3	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	The Louisville Loop will be accommodated and cross the site beginning at Maynard Avenue and continuing to Commerce Crossing Drive. Pedestrian connectivity is being provided at McCrea Lane to allow employees in the nearby neighborhood convenient pedestrian access to the employment center. Heavy trucks will not be able to traverse through residential neighborhoods as no vehicular connection is available to allow for such movement.
Mobility: Goal 3	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	The costs of transportation facilities and services made necessary by development will be the responsibility of the applicant.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Mobility: Goal 3	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	transportation facilities and services are adequate to serve the development.
Mobility: Goal 3	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	All improvements necessary will occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.
Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Utilities to serve the development would appear to be available based on existing development.
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.	✓	An adequate supply of potable water and water for fire-fighting purposes appears to be available or will be made available by the development.
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).	✓	The 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
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 proposal provides industrial land uses to take advantage of an existing location of a business park which is supported by nearby populations and activity.
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 proposal provides industrial land uses to take advantage of an existing location of a business park which is supported by nearby populations and activity.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Economic Development: Goal 1	3. Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	Access will be from a local roadway serving industrial users that immediately connects with a major arterial roadway.
Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	✓	Access will be from a local roadway serving industrial users that immediately connects with a major arterial roadway.
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.	✓	Natural features on the site will be conserved. While encroachments into buffers result, the watercourses of these waterways are not impacted. An intermittent stream will be rerouted as specifically approved by MSD, and KDOW and ACOE approval will be required prior to development. Steep slopes are being avoided and tree canopy preservation is being provided as required. An analysis of karst terrain is included in the record of this case and all development must proceed in accordance with applicable standards.
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.	✓	Preliminary MSD review and approval has been given by Louisville MSD
Housing: Goal 1	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposed multi-family rezoning promotes environments to support aging in place in area where individuals may transition from single-family living to multi-family living near activity centers.
Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The multi-family district is a continuation of the existing development to the immediate north and connectivity is provided and extended to Commerce Crossing Drive.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Housing: Goal 2	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The proposal is in an area of activity where multi-modal transit is present or capable of being provided
Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No displacement will occur as a result of this development and much more housing will be provided as a result of the proposed district.
Housing: Goal 3	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The R-6 district allows for clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing



**4. Existing Binding Elements (15DEVPLAN1090/9-32-97) – Lot 5 and office area of Lot 4**

All binding elements from the approved General Development Plan (3/25/99) are applicable to this site, in addition to the following:

- ~~1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.~~
- ~~2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~
- ~~3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.~~
- ~~4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - ~~a. The development plan must receive full construction approval from Develop Louisville, 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.~~~~
- ~~5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.~~
- ~~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.~~

#### 4. **Proposed Binding Elements**

1. Unless developed in strict compliance with the detailed development as shown on the approved detailed district development plan, the applicant, developer, or property owner shall obtain approval of a revised detailed district development plan and rendering for each site of phase of this project in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, 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.
  - d. A subdivision plat (major or minor) creating the lots and private access easements as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
  - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 1, 2022 Planning Commission hearing. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
  - f. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
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. In coordination with the Department of Public Works' Division of Transportation, Greenways and Trails Office, the applicant, developer, or property owner shall be responsible for construction of the Louisville Loop through the subject site beginning at Maynard Drive and continuing within the proposed and existing right-of-way to the intersection of Cooper Church and Commerce Crossing Drives as shown on the approved development plan.
8. A minimum 30' access easement in a form acceptable to the Planning Commission legal counsel shall be created for the Louisville Loop as shown on the approved development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
9. A minimum of 21% of the existing tree canopy coverage (existing: 463,931 sq. ft.) shall be preserved on lot 4 of the development plan. Tree canopy to be preserved shall be demonstrated on the Tree Preservation Plan and shall be substantially similar to the exhibit dated "received February 7, 2022"
10. The applicant shall obtain the services of an engineer (geotechnical engineer) licensed in the State of Kentucky with experience in the review and analysis of karst geologic features practicing in accordance with KRS 322 to conduct a geological assessment report to recommend treatment and construction method for construction of impervious surfaces within sinkholes and over karst springs. The report shall be provided for approval by the Planning Director or designee.
11. The applicant shall restore any disturbance of the Buffer Area and protected waterway resulting from stream crossings regulated by the LDC by re-grading and re-vegetation in accordance with the restoration standards for protected waterways (Land Development Code Section 4.8.6.k). The following shall also apply:
  - a. Provisions for restoration of the disturbed area shall be included in any development or subdivision agreement for the project, with adequate security to guarantee that the restoration will be completed.
  - b. Construction plans shall identify the alignment of the crossing, the proposed construction techniques, the proposed construction and working easements, and mobilization, staging and temporary disposal areas.
12. An updated Kentucky Historic Properties Survey Form, which shall be completed by a Secretary of the Interior-qualified professional, shall be completed prior to site disturbance. A copy of said report shall be provided to Planning and Design Services and Landmarks Commission.
13. During development, archaeological discoveries such as artifacts, features, and other archaeological deposits shall be reported to the Landmarks Commission. Examples include Native American spear points and tools, historic objects, historic trash pits/dumps, privies (outhouse pits), cisterns, wells, and foundations.
14. The inactive cemetery on Lot 7 shall be preserved and maintained as described in Section 4.4.6 of the Land Development Code. A minimum 30' access easement in a form acceptable to the Planning Commission legal counsel shall be created to preserve access from the public road to the cemetery as shown on the approved development plan A deed restriction in a form approved by the Planning Commission legal counsel shall be recorded acknowledging the location, site, ownership and maintenance of the cemetery.

15. In addition to those binding elements listed above, the general district development plan binding elements of docket 9-32-97 (Commerce Crossing I) are applicable to lot 5 and the open space area between lot 5 and 4, along with the office area of lot 4 along Commerce Crossing Drive.
16. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.