

Planning Commission

Staff Report

November 21, 2024



Case No:	24-ZONE-0109
Project Name:	120 N 42 nd Street Rezoning
Location:	120 N 42 nd Street
Applicant:	Gateway City Homes LLC
Representative:	Bardenwerper, Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	5 – Donna Purvis
Case Manager:	Dante St. Germain, AICP, Senior Planner

REQUESTS

- **Change in zoning** from R-5 Single Family Residential to R-7 Multi-Family Residential
- **Waiver** from Land Development Code section 10.2.4.B.1 to permit encroachment into a required property perimeter Landscape Buffer Area on the north, south and western property lines, and to waive the required plantings (requirement: 10 ft, requested: 4 ft, encroachment of 6 ft) (24-WAIVER-0154)
- **Detailed District Development Plan** with Binding Elements

CASE SUMMARY

The subject site is located on N 42nd Street north of the intersection with W Market Street, and consists of one parcel developed with a single-family structure. The applicant proposes to rezone the property in order to utilize the structure for three residential units.

Single-family and institutional uses surround the property. The W Market Street corridor is located to the south, and is a mix of commercial and residential uses. A small pocket of commercial zoning is located to the north-east. The site is under zoning enforcement, record number ENF-ZON-24-000217, for an excess number of units on the site.

STAFF FINDING

Staff finds that the proposed zoning change meets the guidelines of the Comprehensive Plan. The waiver and development plan are adequately justified for approval and meet the standard of review of the Land Development Code.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

MSD and Transportation Planning have provided preliminary approval of the proposal.

The site is within the study area for the Shawnee Neighborhood Plan (2013). The site is located within the W Market Zone. Economic Development action item ED4 states that the rehabilitation and reuse of aging structures should be incentivized.

INTERESTED PARTY COMMENTS

One interested party email was received from the office of Councilwoman Donna Purvis. This email has been incorporated into the record. A petition of opposition was also received.

STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies 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 site is located in the Traditional Neighborhood Form District

This form is characterized by predominantly residential uses, by a grid pattern of streets with side-walks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings. Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are 50 to 120 years old, the Traditional Neighborhood Form may be used when establishing new developments and redevelopments. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) in the case of new developments or redevelopments using traditional building scales and site layouts, (c) the preservation of the existing or establishing a new grid pattern of streets and alleys, and (d) preservation of or creation of new public open spaces.

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Plan 2040.

The proposed zoning district would permit up to four units on the site at maximum density due to the small size of the lot. Even at maximum density, the impact of the development would be relatively small. Street parking is available along N 42nd Street, and the site has alley access. Development at a lesser density would have a proportionally lesser impact. The proposal is for residential zoning in an area which is residential in nature.

The proposed zoning district is in compliance with Plan 2040.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council

regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4.B.1

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

STAFF: The waiver will not adversely affect adjacent property owners as the structure already exists on the site and has caused no known adverse effects.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The proposed use is residential and unlikely to produce impacts on adjacent residential uses.

- (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 the minimum necessary to afford relief to the applicant as the structure already exists.

- (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: 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 because the structure already exists.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP

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

STAFF: The site is already developed and no natural resources exist on the site currently. Required street trees 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 has been provided, and Metro Public Works has approved the preliminary development plan.

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

STAFF: No open space requirements are pertinent to the request.

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

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

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

STAFF: The overall site design is in compliance with existing and planned future development in the area. The proposal would provide additional residential development in a residential area. Parking is provided along the street and in an area in the rear off the alley.

- (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 to applicable requirements of the Land Development Code and Plan 2040 with the exception of the requested waiver. The site plan complies with the policies and guidelines of the Comprehensive Plan. The proposal re-uses an existing structure to provide additional housing in a residential area.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-5 to R-7
- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Detailed District Development Plan** with **Binding Elements**

NOTIFICATION

Date	Purpose of Notice	Recipients
10/10/2024	Hearing before LD&T	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 5
11/07/2024	Hearing before PC	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 5
11/04/2024	Hearing before PC	Sign Posting on property
11/10/2024	Hearing before PC	Legal Advertisement in the Courier-Journal

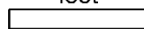
ATTACHMENTS

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

1. Zoning Map



120 N 42nd Street
feet



190
Map Created: 8/21/2024



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COUNTY METROPOLITAN SEWER DISTRICT (MSD),
LOUISVILLE WATER COMPANY (LWC),
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2. Aerial Photograph



120 N 42nd Street
feet

40

Map Created: 6/21/2024



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3. Staff Plan 2040 Checklist

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

Traditional Neighborhood: Residential

Plan 2040 Plan Elements/Staff Analysis	
1	<p><u>Community Form: Goal 1, Policy 7.</u> Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.</p> <p>✓ <u>Staff Analysis:</u> The site is located near transit corridors at N 44th Street and W Market Street.</p>
2	<p><u>Community Form: Goal 1, Policy 9.</u> 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.</p> <p>✓ <u>Staff Analysis:</u> The proposal would not be for uses which are substantially different in scale and intensity compared with adjacent development.</p>
3	<p><u>Community Form: Goal 2, Policy 9.</u> Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.</p> <p>✓ <u>Staff Analysis:</u> The proposal would provide new development permitting residential uses.</p>
4	<p><u>Community Form: Goal 3, Policy 10.</u> 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.</p> <p>NA <u>Staff Analysis:</u> No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site.</p>
5	<p><u>Community Form: Goal 4, Policy 2.</u> Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.</p> <p>NA <u>Staff Analysis:</u> No distinctive cultural features are evident on the site.</p>
6	<p><u>Community Form: Goal 4, Policy 3.</u> Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.</p> <p>NA <u>Staff Analysis:</u> No historic assets are evident on the site.</p>
7	<p><u>Mobility: Goal 1, Policy 4.</u> 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.</p> <p>✓ <u>Staff Analysis:</u> The proposal would not permit higher density or intensity uses.</p>

Plan 2040 Plan Elements/Staff Analysis	
8	<p><u>Mobility: Goal 2, Policy 4.</u> Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.</p> <p>✓ <u>Staff Analysis:</u> Access to the site is through areas of similar intensity and density.</p>
9	<p><u>Mobility: Goal 3, Policy 2.</u> 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.</p> <p>✓ <u>Staff Analysis:</u> The site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities</p>
10	<p><u>Mobility: Goal 3, Policy 5.</u> Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.</p> <p>✓ <u>Staff Analysis:</u> Transportation Planning has approved the proposal.</p>
11	<p><u>Mobility: Goal 3, Policy 6.</u> Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.</p> <p>✓ <u>Staff Analysis:</u> Transportation Planning has approved the proposal.</p>
12	<p><u>Mobility: Goal 3, Policy 9.</u> 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.</p> <p>✓ <u>Staff Analysis:</u> Transportation Planning has approved the proposal.</p>
13	<p><u>Mobility: Goal 3, Policy 10.</u> Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.</p> <p>✓ <u>Staff Analysis:</u> Transportation Planning has approved the proposal.</p>
14	<p><u>Mobility: Goal 3, Policy 21.</u> Prevent safety hazards caused by direct residential access to high speed roadways.</p> <p>✓ <u>Staff Analysis:</u> No direct residential access to high-speed roadways is proposed.</p>
15	<p><u>Community Facilities: Goal 2, Policy 1.</u> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.</p> <p>✓ <u>Staff Analysis:</u> The relevant utilities have approved the proposal.</p>
16	<p><u>Community Facilities: Goal 2, Policy 2.</u> 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.</p> <p>✓ <u>Staff Analysis:</u> Louisville Water Company has approved the proposal.</p>
17	<p><u>Community Facilities: Goal 2, Policy 3.</u> 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).</p> <p>✓ <u>Staff Analysis:</u> MSD has approved the proposal.</p>
18	<p><u>Livability: Goal 1, Policy 5.</u> 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.</p> <p>✓ <u>Staff Analysis:</u> Required street trees will be provided from the approved plant list.</p>
19	<p><u>Livability: Goal 1, Policy 17.</u> 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.</p>

Plan 2040 Plan Elements/Staff Analysis	
NA	Staff Analysis: No karst features are evident on the site.
20	Livability: Goal 1, Policy 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.
NA	Staff Analysis: The site is not located in the regulatory floodplain.
21	Housing: Goal 1, Policy 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.
✓	Staff Analysis: The proposal would increase the variety of housing in Louisville Metro and in the neighborhood.
22	Housing: Goal 1, Policy 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.
✓	Staff Analysis: The proposal would support aging in place. The provision of multiple units on one lot would permit residents to have less yard maintenance requirements than detached single-family residences, allowing residents of the community to remain in the neighborhood as they age.
23	Housing: Goal 2, Policy 1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.
✓	Staff Analysis: The proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area
24	Housing: Goal 2, Policy 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.
✓	Staff Analysis: The proposal would provide housing within an existing neighborhood.
25	Housing: Goal 3, Policy 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.
✓	Staff Analysis: The proposal would increase the variety of ownership options and unit costs in Louisville Metro.
26	Housing: Goal 3, Policy 2. As neighborhoods evolve, discourage displacement of existing residents from their community.
✓	Staff Analysis: No existing residents will be displaced by the proposal.
27	Housing: Goal 3, Policy 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.
✓	Staff Analysis: The proposal would permit innovative methods of housing.

4. 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. 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 Construction Review, 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
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.