

Planning Commission
Staff Report
July 20, 2023



Case No:	23-ZONE-0041
Project Name:	5323 New Cut Rd
Location:	5323 New Cut Rd
Owner(s):	Andre Management, LLC.
Applicant:	Andre Management, LLC.
Representative(s):	Bardenwarper, Talbott and Roberts
Jurisdiction:	Louisville Metro
Council District:	21 – Betsy Ruhe
Case Manager:	Jay Luckett, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from R-4, Single-family Residential to R-6, Multi-family residential
- **Waiver**
 1. **Of Land Development Code** section 10.2.4 to permit proposed pavement and existing structure to encroach into the 20-foot Property Perimeter Property along the northern and southern property lines.
- **District Development Plan** with Binding Elements

CASE SUMMARY

The subject site is located in the Kenwood Hill area of Louisville Metro along New Cut Rd. The applicant is requesting a zoning change to R-6 in order to create 4 multifamily dwelling units within an existing residential structure. The subject site was rezoned from R-5 to R-4 by the Kenwood Hill Areawide Rezoning under docket 9-13-06.

STAFF FINDING

The proposed zoning district generally conforms to the land use and development policies of the Comprehensive Plan. The proposed development will allow an existing structure to be renovated to provide additional housing types. The subject site is well served by a multimodal transportation network and is near services and amenities. The waiver is adequately justified and meets the standards of review.

TECHNICAL REVIEW

MSD and Transportation Planning have approved the preliminary development plan.

REQUIRED ACTIONS

- **RECOMMEND** that Louisville Metro Council **APPROVE** or **DENY** the proposed **Change-in-Zoning** from R-4 to R-6.
- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Detailed District Development Plan** with binding elements

STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES

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

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040: OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate: OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is 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 proposed development will allow an existing structure to be renovated to provide additional housing types. The subject site is well served by a multimodal transportation network including available transit service on New Cut Rd. The site is within half a mile of the Town Center area centered on 3rd Street Rd/Southside Dr with a wide variety of commercial uses. It is less than 1000 feet from a neighborhood commercial center at Kenwood Dr, including the Colonial Gardens development. Iroquois Park is directly across the street, providing high-quality recreational amenities for residents.

The proposal would improve the safety of access to the site by removing an unnecessary second access point and adding pedestrian connectivity. Disturbance on the site is generally limited to areas already occupied by parking and other pavement along the southern property line. Adequate screening will be provided around the subject site adjacent to single-family zoning districts.

The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. Louisville Metro Council has zoning authority over the property in question.

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 the applicant will still provide all required screening and planting around the subject site.

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

STAFF: The waiver will not violate the Comprehensive Plan. The development will be in keeping with the pattern of the area and the encroachment allows the existing structure to remain.

- (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.

- (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 the structure would need to be partially or fully demolished to comply with the buffer. Parking would need to be provided behind the structure, potentially disturbing steeper sloped areas in the rear of the site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR (R)DDDP and/or AMENDMENT TO BINDING ELEMENTS

- (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 within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns. Disturbance is minimized on the site, especially in the rear where the slopes are steepest.

- (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: There are no open space requirements pertinent to the current proposal.

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

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

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

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. The existing structure is being utilized and fits into the prevailing character and setbacks of the area.

- (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 guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

NOTIFICATION

Date	Purpose of Notice	Recipients
5-22-23	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 21
6-12-23 and 6-30-23	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 21
6-30-23	Hearing before PC	Sign Posting on property
6-16-23	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Comprehensive Plan Checklist
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

Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Land Use & Development Goal 1: Community Form	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The subject site is on New Cut Rd, a major arterial roadway. New Cut Rd has transit service and a generally complete sidewalk network. There are nearby employment opportunities, as well as multiple commercial centers in the vicinity.
2	Land Use & Development Goal 1: Community Form	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	✓	Adequate screening will be provided adjacent to uses of a lower intensity.
3	Land Use & Development Goal 2: Community Form	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposed zoning change would allow for additional housing options in the area. The proposed development utilizes an existing residential structure.
4	Land Use & Development Goal 3: Community Form	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.	✓	The site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns.
5	Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	The subject site does not have any distinctive cultural features. Staff recommends preservation of mature trees on the subject site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Land Use & Development Goal 4: Community Form	3. 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.	✓	The subject site does not contain any historic resources. The applicant is proposing to renovate the existing structure.
7	Land Use & Development Goal 1: Mobility	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The subject site is served by existing transit on New Cut Rd. The site is within half a mile of the Town Center area centered on 3 rd Street Rd/Southside Dr with a wide variety of commercial uses. It is less than 1000 feet from a neighborhood commercial center at Kenwood Dr, including the Colonial Gardens development.
8	Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	The site utilizes existing access from New Cut Rd.
9	Land Use & Development Goal 3: Mobility	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.	✓	New Cut Rd allows for ready access to a multimodal transportation network. The proposed zoning district would allow for additional housing options within an area well-served by transit and near employment opportunities.
10	Land Use & Development Goal 3: Mobility	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.	✓	Adequate roadways exist adjacent to and near the subject site. New Cut Rd has sidewalks adjacent to the subject site and transit service is available with the nearest stop in front of the adjacent property to the south of the subject site.
11	Land Use & Development Goal 3: Mobility	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.	✓	Adequate transportation facilities exist to serve the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Land Use & Development Goal 3: Mobility	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.	✓	Adequate transportation facilities exist to serve the site.
13	Land Use & Development Goal 3: Mobility	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	The proposed zoning is compatible with roadway improvements proposed by the New Cut Rd/Taylor Blvd Corridor Study
14	Land Use & Development Goal 3: Mobility	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	The site utilizes existing access from New Cut Rd. Sidewalk repairs or right-of-way dedication may be required to accommodate the proposed development.
15	Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Utility services will be coordinated.
16	Land Use & Development Goal 2: Community Facilities	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.	✓	Water service will be coordinated with appropriate agencies.
17	Land Use & Development Goal 2: Community Facilities	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).	✓	Sewer service will be coordinated with MSD.
18	Land Use & Development Goal 1: Livability	5. Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	✓	Staff recommends preservation of existing mature trees on the subject site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
19	Land Use & Development Goal 1: Livability	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	The subject site is not in a karst prone area. The site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns.
20	Land Use & Development Goal 1: Livability	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	The subject site is not within the floodplain.
21	Land Use & Development Goal 1: Housing	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The proposed zoning would allow for a variety of housing types. An existing structure on the site is proposed to be used for the development and will fit within the residential development pattern of the district.
22	Land Use & Development Goal 1: Housing	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposed zoning district will help promote aging in place by providing additional housing type options. The site is served by transit and close to a variety of commercial uses.
23	Land Use & Development Goal 2: Housing	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposed zoning district would promote mixed income and intergenerational development by allowing for additional housing types in an area with access to a variety of commercial services, amenities and employment opportunities.
24	Land Use & Development Goal 2: Housing	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	New Cut Rd provides ready access to a multimodal transportation network that provides safe and convenient access to employment opportunities. The subject site is across the street from Iroquois Park and is near a variety of commercial uses providing amenities and services.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
25	Land Use & Development Goal 3: Housing	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The proposed zoning encourages the provision of fair and affordable housing by allowing for a variety of housing types, ownership options, lotting patterns and unit sizes.
26	Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The proposed zoning district would not displace current residents.
27	Land Use & Development Goal 3: Housing	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The proposed zoning would allow for a variety of lotting patterns and unit types, allowing for production of fair and affordable 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. 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.
3. 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

Land Development and Transportation Committee
Staff Report
June 8, 2023



Case No:	23-ZONEPA-0008
Project Name:	5323 New Cut Rd
Location:	5323 New Cut Rd
Owner(s):	Andre Management, LLC.
Applicant:	Andre Management, LLC.
Representative(s):	Bardenwarper, Talbott and Roberts
Jurisdiction:	Louisville Metro
Council District:	21 – Betsy Ruhe
Case Manager:	Jay Luckett, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from R-4, Single-family Residential to R-6, Multi-family residential
- **Waivers**
 1. **Of Land Development Code** section 10.2.4 to permit proposed pavement to encroach into the 20-foot Property Perimeter Property along the northern property line.
 2. **Of Land Development Code** section 10.2.4 to permit the existing structure to encroach into the 20-foot Property Perimeter Property along the southern property line.
- **District Development Plan** with Binding Elements

CASE SUMMARY

The subject site is located in the Kenwood Hill area of Louisville Metro along New Cut Rd. The applicant is requesting a zoning change to R-6 in order to create 4 multifamily dwelling units within an existing residential structure. The subject site was rezoned from R-5 to R-4 by the Kenwood Hill Areawide Rezoning under docket 9-13-06.

STAFF FINDING

The proposal is ready for a Public Hearing.

TECHNICAL REVIEW

MSD and Transportation Planning have approved the preliminary development plan.

REQUIRED ACTIONS

- Set the public hearing date.

STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES

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

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is 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 Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. Louisville Metro Council has zoning authority over the property in question.

NOTIFICATION

Date	Purpose of Notice	Recipients
5-22-23	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 21
	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 21
	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



3. 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. 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.
3. 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

**Pre-app
Staff Report**
February 8, 2023



Case No:	23-ZONEPA-0008
Project Name:	5323 New Cut Rd
Location:	5323 New Cut Rd
Owner(s):	Andre Management, LLC.
Applicant:	Andre Management, LLC.
Representative(s):	Bardenwarper, Talbott and Roberts
Jurisdiction:	Louisville Metro
Council District:	21 – Betsy Ruhe
Case Manager:	Jay Lockett, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from R-4, Single-family Residential to R-6, Multi-family residential
- **Conditional Use Permit** for a short-term rental
- **District Development Plan**

CASE SUMMARY

The subject site is located in the Kenwood Hill area of Louisville Metro along New Cut Rd. The applicant is requesting a zoning change to R-6 in order to create 4 multifamily dwelling units within an existing residential structure. The subject site was rezoned from R-5 to R-4 by the Kenwood Hill Areawide Rezoning under docket 9-13-06.

STAFF FINDING

The short-term rental proposal appears to not comply with multiple parts of Land Development Code Section 4.2.63. There is at least one active Conditional Use Permit for a short-term rental within 600 feet of the subject site. Short-term rentals are not permitted in R-6 unless they are in a structure that is single family, duplex or part of a condominium community.

The proposed zoning change is ready for a neighborhood meeting and formal application. Ultimately Louisville Metro Council would need to determine if the proposal meets the policies of Plan 2040.

STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES

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

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040: **OR**
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate: **OR**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF:

2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF:

3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF:

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

A short term rental of dwelling unit that is not the primary residence of the host or the short term rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and a short term rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.

STAFF: The applicant has been informed of this provision.

B. The dwelling unit shall be limited to a single short term rental contract at a time.

STAFF: The applicant has been informed of this provision.

C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals.

STAFF: The applicant has been informed of this provision.

D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. This provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host.

STAFF: The proposal does not comply with this provision. There is an active short-term rental located at 5309 Westhall Ave approved under docket 19-CUP-0232.

E. The building in which dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. This evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board wherein all condominium owners were notified that short term rental of the subject condominium would be discussed and a majority of the board members voted in favor of permitting /allowing the short term rental of the subject condominium. In addition to notification required by Chapter 1 1 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted.

STAFF: The proposal does not appear to comply with this provision. The proposed 4-plex is not an established condominium community, and would not be a duplex or single-family dwelling.

F. Food and alcoholic beverages shall not be served by the host to any guest.

STAFF: The applicant has been informed of this provision.

G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts.

STAFF: The applicant has been informed of this provision.

H. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity.

STAFF: The applicant has proposed 4 parking spaces including 1 ADA space.

I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.

STAFF: The applicant has been informed of this provision.

J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31st) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property

maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief.

STAFF: The applicant has been informed of this provision.

K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void.

STAFF: The applicant has been informed of this provision.

L. An active registration of the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a changer of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code.

STAFF: The applicant has been informed of this provision.

STAFF ANALYSIS FOR CHANGE IN ZONING

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is 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.

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. Louisville Metro Council has zoning authority over the property in question.

NOTIFICATION

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

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. CUP Pre-app map
4. Plan 2040 Staff Analyses

1. Zoning Map






2. Aerial Photograph




3. CUP Pre-app map




Legend

-  Subject Site
-  Buffer
-  Approved

5323 New Cut Rd
Map Created: 02/03/2023

feet

 190

 **LOJIC**
Copyright (c) 2012, LOUISVILLE AND JEFFERSON
 COUNTY METROPOLITAN SEWER DISTRICT (MSD),
 LOUISVILLE WATER COMPANY (LWC),
 LOUISVILLE METRO GOVERNMENT AND
 JEFFERSON COUNTY PROPERTY VALUATION
 ADMINISTRATOR (JPA). All Rights Reserved

This map is subject to change upon the Board of Zoning Adjustment granting approvals to other
 Short Term Rental Conditional Use Permits.



4. Plan 2040 Staff Analysis

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

Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Land Use & Development Goal 1: Community Form	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The subject site is on New Cut Rd, a major arterial roadway. New Cut Rd has transit service and a generally complete sidewalk network. There are nearby employment opportunities, as well as multiple commercial centers in the vicinity.
2	Land Use & Development Goal 1: Community Form	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	+/-	Adequate transitions in the form of buffering and screening will need to be provided adjacent to uses of a lower intensity.
3	Land Use & Development Goal 2: Community Form	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposed zoning change would allow for additional housing options in the area. The proposed development utilizes an existing residential structure.
4	Land Use & Development Goal 3: Community Form	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.	✓	The site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns.
5	Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	The subject site does not have any distinctive cultural features. Staff recommends preservation of mature trees on the subject site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Land Use & Development Goal 4: Community Form	3. 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.	✓	The subject site does not contain any historic resources. The applicant is proposing to renovate the existing structure.
7	Land Use & Development Goal 1: Mobility	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The subject site is served by existing transit on New Cut Rd. The site is within half a mile of the Town Center area centered on 3 rd Street Rd/Southside Dr with a wide variety of commercial uses. It is less than 1000 feet from a neighborhood commercial center at Kenwood Dr, including the Colonial Gardens development.
8	Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	The site utilizes existing access from New Cut Rd.
9	Land Use & Development Goal 3: Mobility	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.	✓	New Cut Rd allows for ready access to a multimodal transportation network. The proposed zoning district would allow for additional housing options within an area well-served by transit and near employment opportunities.
10	Land Use & Development Goal 3: Mobility	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.	✓	Adequate roadways exist adjacent to and near the subject site. New Cut Rd has sidewalks adjacent to the subject site and transit service is available with the nearest stop in front of the adjacent property to the south of the subject site.
11	Land Use & Development Goal 3: Mobility	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.	✓	Adequate transportation facilities exist to serve the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Land Use & Development Goal 3: Mobility	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.	✓	Adequate transportation facilities exist to serve the site.
13	Land Use & Development Goal 3: Mobility	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	The proposed zoning is compatible with roadway improvements proposed by the New Cut Rd/Taylor Blvd Corridor Study
14	Land Use & Development Goal 3: Mobility	21. Prevent safety hazards caused by direct residential access to high speed roadways.	+/-	The site utilizes existing access from New Cut Rd. Sidewalk repairs or right-of-way dedication may be required to accommodate the proposed development.
15	Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	+/-	Utility services will need to be coordinated.
16	Land Use & Development Goal 2: Community Facilities	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.	+/-	Water service will need to be coordinated with appropriate agencies.
17	Land Use & Development Goal 2: Community Facilities	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).	+/-	Sewer service will need to be coordinated with MSD.
18	Land Use & Development Goal 1: Livability	5. Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	+/-	Staff recommends preservation of existing mature trees on the subject site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
19	Land Use & Development Goal 1: Livability	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	The subject site is not in a karst prone area. The site is within the Kenwood Hills area, which has some areas of steep slopes and potential instability. The subject site does not appear to have any specific environmental concerns.
20	Land Use & Development Goal 1: Livability	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	The subject site is not within the floodplain.
21	Land Use & Development Goal 1: Housing	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The proposed zoning would allow for a variety of housing types. An existing structure on the site is proposed to be used for the development and will fit within the residential development pattern of the district.
22	Land Use & Development Goal 1: Housing	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposed zoning district will help promote aging in place by providing additional housing type options. The site is served by transit and close to a variety of commercial uses.
23	Land Use & Development Goal 2: Housing	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposed zoning district would promote mixed income and intergenerational development by allowing for additional housing types in an area with access to a variety of commercial services, amenities and employment opportunities.
24	Land Use & Development Goal 2: Housing	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	New Cut Rd provides ready access to a multimodal transportation network that provides safe and convenient access to employment opportunities. The subject site is across the street from Iroquois Park and is near a variety of commercial uses providing amenities and services.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
25	Land Use & Development Goal 3: Housing	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The proposed zoning encourages the provision of fair and affordable housing by allowing for a variety of housing types, ownership options, lotting patterns and unit sizes.
26	Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	The proposed zoning district would not displace current residents.
27	Land Use & Development Goal 3: Housing	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The proposed zoning would allow for a variety of lotting patterns and unit types, allowing for production of fair and affordable housing.

