

**Planning Commission  
Staff Report**  
July 27, 2023



<b>Case No:</b>	23-ZONE-0053
<b>Project Name:</b>	Fern Valley Apartments
<b>Location:</b>	4111 and 4113 Fern Valley Rd
<b>Owner(s):</b>	Sharon and David Strickland
<b>Applicant:</b>	Dongar Food
<b>Representative(s):</b>	Mindel, Scott and Associates
<b>Council District:</b>	2 – Barbara Shanklin
<b>Case Manager:</b>	Jay Lockett, AICP, Planner II

**REQUEST(S)**

- **Change-in-Zoning** from R-4 and R-5, Single-family Residential to R-5A Multi-family residential
- **Waiver** of Land Development Code section 10.2.4.B.3 to allow greater than 50% overlap between a utility easement and a required landscape buffer area.
- **Variance** of Land Development Code section 5.1.12.B.2.a to allow Buildings 2 and 3 to exceed the infill setbacks along Dellafay Dr by up to 80 feet as shown on the Development Plan.
- **District Development Plan/Major Preliminary Subdivision Plan** with Binding Elements

**CASE SUMMARY**

The applicant is proposing to construct 44 multifamily dwelling units on approximately 4.7 acres. The subject site is located in southern Jefferson County along Fern Valley Rd, approximately 3/4 mile east of Preston Hwy. One proposed building would be accessed from Fern Valley Rd, while 2 other buildings would be accessed via the proposed extension of Dellafay Dr.

**STAFF FINDING**

The proposed zoning district is consistent with the provisions of the Comprehensive Plan and will provide opportunities for additional housing options in the area. The waiver, variance and District Development Plan are adequately justified and meet the standards of review.

**TECHNICAL REVIEW**

Transportation Planning and MSD have approved the preliminary development plan.

**REQUIRED ACTIONS**

- **RECOMMEND** that Louisville Metro Council **APPROVE** or **DENY** the proposed **Change-in-Zoning** from R-4 and R-5 to R-5A.
- **APPROVE** or **DENY** the **Variance**
- **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.
- 4.

## **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 subject site is located along Fern Valley Road, a major arterial. There is a wide variety of employment opportunities, services and amenities in the area. The proposed zoning change would allow for additional housing options in the area. Adequate transitions in the form of buffering and screening will be provided adjacent to uses of a lower intensity.

Ultimately Louisville Metro Council must decide if the proposal meets the requirements of the Comprehensive Plan.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE:**

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

STAFF: The requested variance will not adversely affect public health safety or welfare as all required buffering is provided around the site. The site will be constructed according to all applicable building codes and safety requirements. MSD and Transportation Planning have approved the preliminary plan and will ensure safety through the construction permitting process.

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

STAFF: The requested variance will not alter the essential character of the general vicinity.

- (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 since the building will be constructed according to the building code, including all safety and health related provisions.

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

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations since it will allow for a more compact and efficient development. Screening and buffering will be provided around the subject site.

**ADDITIONAL CONSIDERATIONS:**

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

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity, as the lot is narrow with protected waterways and existing drainage infrastructure that limit the buildable area.

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 not create an unnecessary hardship on the applicant.

3. The circumstances are 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 the applicant is requesting approval prior to construction.

## **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. All required screening and planting will be provided around the site.

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

STAFF: The waiver will not violate the Comprehensive Plan, as all required screening and planting will be provided around the subject site. The easement and drainage infrastructure is existing on the site..

- (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 easements already exist. All required screening and planting will be provided around the subject 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 streams on site will be protected via required buffers. Tree canopy is being preserved around the site within buffer areas.

- (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 Transportation Planning 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: All required open space provisions of the land development code are being provided on the subject site.

- (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. Appropriate screening will be provided to screen adjacent properties and roadways.

- (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, except where relief is requested.

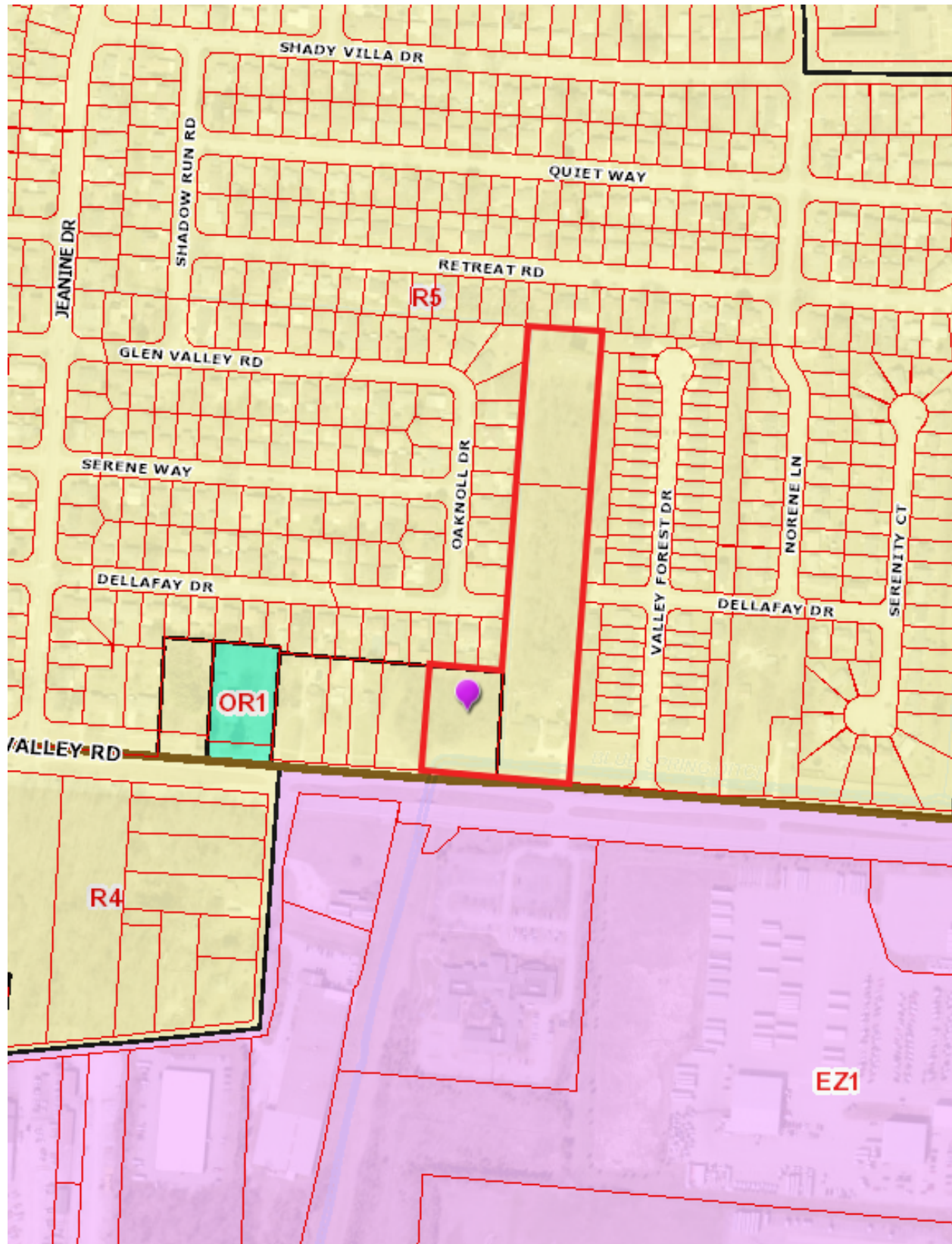
## **NOTIFICATION**

Date	Purpose of Notice	Recipients
6-8-23	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
7-17-23	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
7-14-23	Hearing before PC	Sign Posting on property
	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 located along Fern Valley Road, a major arterial. There is a wide variety of employment opportunities, services and amenities in the area. Transit service is available along Preston Highway approximately 3500 feet to the west.
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 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.
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 has potential for wetlands and hydric soils, as well as perineal and intermittent streams. A preliminary determination has been provided by the applicant. MSD has approved the preliminary development plan and will ensure compliance with applicable federal and local regulations regarding flood plains and wetlands.
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. Mature trees are being preserved around the site within buffer areas.



#	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.	+/-	Per historic preservation staff: The demolition of the structures could have an adverse effect on sites potentially eligible for the National Register. Land Use and Development Goal 4: Community Form in Plan 2040 stresses the protection of historic resources. Historic Preservation staff recommends adaptive re-use of the structure instead of demolition. If structures are over 50 years old and are determined to be eligible for the National Register there will be a required 30-day hold on the issuance of the permit as per Wrecking Ordinance Section 150.110.
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 not served directly by transit. TARC service is available approximately 3500 ft away at Preston Hwy. The site is approximately 2200 from suburban marketplace corridor along Preston Hwy. There is a large area of Suburban Workplace form immediately across Fern Valley Rd.
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 proposes private access directly from Fern Valley Rd as well as via a proposed extension of Dellafay dr..
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.	✓	The proposed zoning district would allow for additional housing options within an area near employment opportunities and a commercial corridor.
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.	✓	Transportation Planning has approved the preliminary development plan.
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.	✓	Transportation Planning has approved the preliminary development plan.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Land Use & Development Goal 3: Mobility	<b>9.</b> When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	Transportation Planning has approved the preliminary development plan.
13	Land Use & Development Goal 3: Mobility	<b>10.</b> Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Transportation Planning has approved the preliminary development plan.
14	Land Use & Development Goal 3: Mobility	<b>21.</b> Prevent safety hazards caused by direct residential access to high speed roadways.	✓	A portion of the site proposes direct access to Fern Valley Rd, but will be a right-in/right-out only due to the divided highway nature of that roadway.
15	Land Use & Development Goal 2: Community Facilities	<b>1.</b> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Utility services will be coordinated.
16	Land Use & Development Goal 2: Community Facilities	<b>2.</b> Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	Water service will be coordinated with appropriate agencies.
17	Land Use & Development Goal 2: Community Facilities	<b>3.</b> Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	Sewer service will be coordinated with MSD.
18	Land Use & Development Goal 1: Livability	<b>5.</b> 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 wherever possible.

#	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 site is not within a karst prone area.
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 within floodplain areas. MSD has approved the preliminary development plan and will ensure compliance with applicable regulations.
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. The development and will fit within the residential development pattern of the district, which has a variety of residential zoning districts, densities and housing types.
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 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.	✓	The site has access to a transportation network that provides safe and convenient access to employment opportunities, services and amenities.

#	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.	✓	Two existing homes on the subject site are proposed to be demolished. It is unclear if any residents will be displaced by the development, but the proposed zoning district would permit additional housing options in the area.
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.

### 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.

- c) A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
  - d) A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e) Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall be substantially similar to those shown at the Planning Commission public meeting. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
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.