LAW OFFICES OF
SINGLER & RITSERT
209 OLD HARRODS CREEK ROAD
SUITE 100
LOUISVILLE, KENTUCKY 40223
(502) 245-0825
FAX (502) 245-0827

JOHN P. SINGLER
CARRIE D. RITSERT

Jsingler83@gmail.com
Ritsertc@bellsouth.net

6/23/25

To: Lyndon City Council

From: John Singler

Re: Re-Zoning Approvals

Dear Council:

This memorandum is intended to be a resource when considering rezoning requests. The legal environment in which these zoning decisions are made will be summarized to give you some general understanding of the rather complex law associated with zoning. The next topic will be issues associated with approving a rezoning request. Finally, the challenges associated with legally denying a rezoning request will be discussed.

Legal Backdrop

As a preliminary matter, any developer or any resident has a statutory right to appeal **either** the approval or denial of a rezoning request to Circuit Court. This statutory right of appeal means that zoning decisions are different than other decisions made by the City Council, for which there is no statutorily recognized appeal right. Further, zoning decisions must be based on the Comprehensive Plan and the Land Development Code, which are very complex documents (around 1,000 pages long), that provide the framework for all zoning decisions. To deal with this complexity, developments must go through a detailed technical review and public hearing with the Jefferson County Planning Commission. At the end of this review, which includes detailed review from drainage, traffic and land use professionals, the Planning

Commission will issue a detailed recommendation and fact-finding to the City Council. This recommendation will detail the reasons why the proposal either complies or does not comply with the Comprehensive Plan and the Land Development Code. Only the Comprehensive Plan and the Land Development Code can be used to determine whether to approve or deny a zoning request. The United States Constitution, other state and federal laws found on the internet cannot be the basis for an approval or denial of a zoning request.

Deciding To Approve And Conditions Of Approval

Deciding to approve a re-zoning request is certainly not as complicated as deciding to deny a request. Assuming the positive recommendation of the Planning Commission, the required detailed findings supporting the approval are in the record and you may rely on it as a basis for accepting the recommendation of the Planning Commission. Therefore, most questions concerning zoning approvals concern what type of additional binding elements can placed on a development as a condition of approval.

In each re-zoning proposal, these conditions are site driven and negotiated with the developer. Once agreed, these binding elements become rules that run with the land and can be enforced against any subsequent property owner. Most development proposals that make it through Planning Commission review do end up being approved, based on a negotiation with the developer over the Binding Elements.

The variety of conditions that can be imposed upon a development vary so much it is difficult to list them all but a partial list of the more common include:

- Buffering abutting properties with walls, berms, and landscaping.
- Adding additional landscaping over and above the minimum required.
- Screening for dumpsters and parking.

- Limitations on lighting.
- Limitation of noise at the property line.
- Protection of buffer areas and maintenance of the buffer areas.
- Agreements to limit or "bind out" certain permitted uses.
- Agreement of developer to make roadway and other infrastructure improvements.

The limit on what binding elements can be demanded by a city council is based on a rough proportionality of the proposed binding element to the size and impact of the development. For instance, a binding element requiring a massive roadway extension cannot be imposed on a tiny development, because that requirement is not proportional to the size, scale (and therefore the impact) of the proposal. Binding elements are negotiated and agreed upon between the City and the developer to avoid any argument that the conditions imposed where unreasonable.

Deciding To Deny And Surviving Appeal

The developer and the neighbors to the development both have a statutory right to appeal the City's denial or approval decision of re-zoning to Circuit Court. Judicial review of a zoning decision typically occurs when a legislative body denies a request. It is also possible, but less likely, that someone will challenge a City's decision to approve a rezoning proposal.

The typical fact scenario is that the developer has obtained the favorable recommendation of the Planning Commission for its rezoning application. Once the developer has gone through the Planning Commission process, the favorable recommendation of the Planning Commission means that in the Planning Commission's opinion the developer's proposal has met all the requirements of the Land Development Code and the Comprehensive Plan. This includes all the technical review by various agencies of Metro Louisville government, including traffic, drainage and compliance with the Comprehensive Plan and Land Development Code. If the city council

then overturns the recommendation of the Planning Commission and denies the zoning proposal, the developer has a statutory right to sue on the basis that the legislative body's decision was not based on fact, and was therefore arbitrary and capricious.

The court's review is limited to a determination of whether the legislative body acted within its statutorily granted powers, whether due process was afforded to all parties involved, and whether the decision is supported by substantial evidence. American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, 379 S.W.2d 450 (Ky.1964); See also Hilltop Basic Resources, Inc. v. County of Boone, 180 S.W.3d 464 (Ky.2005); Hougham v. Lexington-Fayette County Urban Government, 29 S.W.3d 370 (Ky.App.1999); Minton v. Fiscal Court of Jefferson County, 850 S.W.2d 52 (Ky.App.1992).

The Court cannot substitute its judgment for that of the elected decision-makers. If the requirements of due process are followed, no further evidence will be considered on appeal other than the record made before the Planning Commission and the Legislative Body. City of Louisville v. McDonald, 470 S.W.2d 173, 170 (Ky.1971).

Denial Issue One: Due Process

There are several typical reasons that a City loses a zoning decision in court. The first to be discussed is due process, because this argument has an impact on how you deal as an elected official with your neighbors who might not like the proposal and want to talk to you about your decision. Due process in a zoning case is a right of a person to fundamental fairness when having their re-zoning application considered by the legislative body. This means there was some ability of the developer to be present, question and respond to the fact record on which the legislative body based its decision. Therefore, care must be taken to limit the councilmember's contacts and communication with objecting residents, outside of the actual council meeting.

You must think of your position like sitting in a jury. Everyone would understand and agree that a jury member should not gather his or her own facts outside the courtroom. To do so would prejudge the case and not afford the defendant his "due process" day in court. It is certainly appropriate to be polite to an adjacent property owner when you are approached in the grocery store or getting a cup of coffee. However, you should limit your interaction and certainly, never express any opinion on how you might vote on the matter. Avoidance of rallies of the opposition is always the best practice for a sitting council member.

You should tell residents that the law requires the decision to be based on the record created before the Planning Commission at the official public hearing. Therefore, all their comments and concerns should be made at the public hearing if they want those comments and concerns to be considered as a basis for either approving or denying a project. You can't take their testimony at Starbucks or the grocery store. Instead, your consideration of the proposal should be based only upon the fact record presented to you by the Planning Commission.

Denial Issue Two: Substantial Evidence

Ultimately, the court will review your actions for arbitrariness, or clear error. If a legislative body's action is supported by substantial evidence in the record, it will not be deemed to be arbitrary. The decision regarding zoning and use of a parcel of real property is not a judicial function and is thus limited to whether the decision-maker acted in an arbitrary manner in reaching a legislative decision. On appellate review of such an administrative agency's decision, the court should be bound by the factual findings of the agency if they are supported by substantial evidence. Bowling v. Natural Resources and Environmental Protection Cabinet, 891 S.W.2d 406 (Ky. App. 1995).

If any substantial evidence supports the agency's decision, it cannot be held arbitrary and will be sustained. Id. at 409. "We agree with the circuit court that a planning commission does not have to rezone solely because a request is in accordance with a comprehensive plan or its recommended land use element." Hougham v. Lexington-Fayette Urban County Government, 29 S.W.3d 370, 373 (KY 1999); citing 21st Century Development Co. LLC v. Watts, 958 S.W.2d 25 (Ky. .App. 1997).

The problem becomes what is substantial evidence to overturn the recommendation of the Planning Commission. Over 75 years of modern zoning practice, the issues of drainage, traffic, lighting, and other impacts talked about in the Comprehensive Plan and land Development Code have been quantified and there are now objective criteria to measure those impacts. Engineers can calculate and quantify water run-off from the site and the development must be designed to meet established criteria in the Land Development Code. Same with traffic, lighting, and other impacts.

As an example, please refer to the attached Exhibit One, which is a typical Staff Report for a re-zoning request in Jefferson County. This report is the summary from the Jefferson County Planning Staff of the evidence the developer has presented to support its re-zoning request, along with the Staff's opinion as to whether the developer has met the requirements of the Land Development Code and the Comprehensive Plan. Please refer to the "checklist" which contains detailed and specific goals related to the project.

Reading through these entries should demonstrate the type of objective, factual data that must be assembled to support a re-zoning request. A similar objective, factual reason must be presented to deny a re-zoning request. Please note that the fact that the neighbors do not like it is

not part of the checklist, because whether someone "likes" something is not an objective standard based on fact.

Once the Planning Commission has recommended in favor of a proposal, the developer can argue persuasively that its proposal has met all technical requirements of the Land Development Code, the Comprehensive Plan and all the objective criteria science has used to evaluate the impacts of development plans over the years.

Substantial evidence has been defined as evidence which, when taken alone or in the light of all evidence, has enough probative value to induce conviction in the mind of a reasonable person. The problem is that what a lay-person thinks is substantial evidence to deny a re-zoning request is often not what a court would recognize as evidence.

These legal concepts are often hard to understand and therefore, below is a discussion of what **is not** substantial evidence:

Feelings And Fear

The fact that a new development will result in more traffic on the streets and more water in the drainage ditch does not (standing alone), support denial. Cars travel on the roads and water is supposed to go in the drainage ditch, that's why those structures were built. The public infrastructure is there to be used by the public and that includes all the public, not just that portion of the public you may prefer. Simple additional usage of public infrastructure is not enough to support denial.

However, if additional traffic or water has identifiable impacts on the community, there may be a legitimate reason to deny. But those impacts must be quantifiable and based on established objective criteria. Increased usage of the public infrastructure is evidence of change

and growth. Change and growth happens, whether you desire it or not, or whether you favor it or not, it is simply a function of living in the world.

To tell the difference, ask yourself this question. Are you able to quantify an impact from additional traffic, water, or light? Can you articulate that impact based on objective measurable criteria? An example of a quantifiable impact relating to traffic is evidence that the amount of traffic from the proposed development will result in a reduction in the level of service at an intersection nearby. An example of quantifiable impact relating to drainage might be evidence that the developer has not calculated the size of its stormwater detention basin in accordance with the Land Development Code. An example of a quantifiable impact relating to appropriateness might be that the developer must request significant waivers and variances from the Land Development Code relating to setbacks and buffers.

Fear of change is not substantial evidence. However, fears are the most common objection to zoning proposals by the public. For instance, there is a very common fear that developments "change" the community, bring crime and negatively affect the value of surrounding homes. Yet there is little data presented, only a conclusion that "this is going to ruin our city", or "we'll never be able to sell our houses." To know the difference between an expression of fear and an objective fact, look for any measurable impact. Chances are if the objection cannot be tied to an objective, measurable impact or standard -- what you have is a feeling, or a fear, not evidence.

Preference

We live in a free market, capitalist society where government cannot pick what business can go here or there. It may well be better for the community to have a high-end restaurant rather than a Taco Bell. However, in our system government can only decide to zone the

property residential, commercial, or industrial, not pick which restaurant the City likes better. There may be too many tire stores, mattress shops and apartments. But the United States is not a planning economy and government cannot tell private business how to spend its money. Just because you would rather a different end user is a personal preference, not an objective measurable fact.

Process

I will address what I have found to be the best process for handling a zoning case with much opposition:

- First and foremost, explain to those who reach out to you or the city to object to the project the importance of showing up at the public hearing at the Planning Commission and putting their testimony in the record. If the testimony is in the record, the information may be able to be used as part of an approval or denial. If it is not part of the record, the only way you can rely upon the information is if you hold your own public hearing, in the same way as the Planning Commission, with all the notice and due process required. Because of the complexity of holding a new public hearing and the 90-time period, holding a new public hearing is not a good idea.
- The best process is for the city to docket the rezoning case quickly for discussion because the city by statute only has 90 days from the day that the Planning Commission approved the project to make its decision. If the city does not make its recommendation within 90 days, the recommendation of the Planning Commission is final. Therefore, the best practice I have found for these cases is to immediately draft an ordinance approving the rezone request and putting it on the next available city council meeting agenda for

discussion and first reading. At first reading (or at second reading), it should become apparent if the zoning request does not have the votes to pass.

- If it becomes apparent at the first reading that eh council has concerns about approving the project, I will ask the council on the record what those concerns are. Be ready to respond to allow me to begin the process of drafting a denial order that tracks back to concerns raised by the council members. As indicated above, those concerns cannot be based on feelings, fear or preference as stated above.
- At the second reading we will have on the agenda both the approval ordinance and then a specific denial municipal order drafted by me with the findings in support of the denial based upon the concerns that council members have stated at the first reading meeting.

I will end this memo with a few summaries of courts which have overturned a City's denial of a re-zoning request:

- 2018. City in Jefferson County is presented with an application to rezone homes that are still single family, but directly adjacent to the Shelbyville Road corridor and within the Suburban Marketplace Corridor form district, which allows heavy intensity uses. City denies the request based on an argument that it desires to protect and preserve the remaining single-family homes near the city center to encourage residents to live where they work. The Court does not agree and reverses. The Court determined the character of area has changed and the property is simply no longer appropriate for single family residential and that is evidenced by the fact that it is on a major arterial roadway and in the Suburban Marketplace Corridor. Decision to deny the request was reversed with instructions to the City to change the zoning from residential to something more

appropriate to the changes in the neighborhood. This is an example of the decision being based on the city's PREFERENCE for a different end-user.

- 1977. Outside of Versailles KY, a farm tract is proposed to be rezoned from agricultural to single-family residential. The comprehensive plan for the county shows this area to become residential in the future. Planning commission approved zoning change and fiscal court voted it down and adopted their own findings of fact. Court found it arbitrary and that there was a compelling need for more residential. The comprehensive plan is a "plan for the orderly growth of an area, and property owners must be able to rely on it when making investments in real estate and for the protection of land values." This is an example of the decision being based on PREFERENCE for a different end-user.
- 1970. The court overturned a zoning denial because "... it characterized that protest before the legislative body as emotional, unfounded and frivolous." This is an example of the decision being based on FEELING and FEAR, because the city based its decision a bunch of angry residents and not facts.
- 1971. Family owns 2.5 acres in Louisville zoned single family residential, which is sold to a developer who applies to rezone for apartments. The planning commission approve the application, but the board of aldermen denied the request. The alderman opposed to the development said the project would inconvenience neighbors and their property values would go down. The alderman had also met with residents opposed to the development outside of the city meetings. The court held the rejection as arbitrary and "amounted to confiscation of the property without due process of law." This is an example of a violation of DUE PROCESS and then the decision was based on FEELING,

PREFERENCE and FEAR. The city allowed itself to be swept up by the people objecting to the development and in doing so abandoned fact.

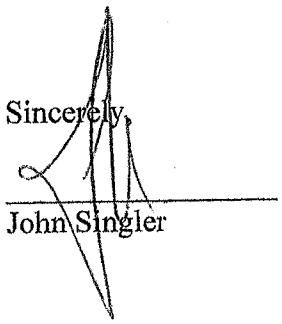

EXHIBIT ONE

3. Staff Plan 2040 Checklist

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

Neighborhood: Non-Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	**6.** Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The proposal would not constitute a non-residential expansion into a residential area. The site is already zoned C-N and has been proposed for non-residential uses in the past.
2	Community Form: Goal 1	**7.** Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The site is located on Lyndon Lane, a minor arterial and transit corridor at this location.
3	Community Form: Goal 1	**8.** Encourage industries to locate in workplace Form Districts or in areas readily served by infrastructure and transportation facilities, including transit, rather than isolated industrial sites.	NA	The proposal is not for industrial zoning.
4	Community Form: Goal 1	**15.** When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionally impacted.	✓	The proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions must comply with LMCO and LDC restrictions.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
5	Community Form: Goal 1	**16.** Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionally affected.	✓	The proposed zoning district would not permit noxious odors, particulates or emissions.
6	Community Form: Goal 1	**17.** Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	Access to the site is via Lyndon Lane, a minor arterial at this location.
7	Community Form: Goal 1	**18.** Mitigate adverse impacts of noise from proposed development on existing communities.	✓	No adverse impacts from noise on existing communities are anticipated.
8	Community Form: Goal 1	**21.** Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	NA	The proposed zoning district would not permit uses handling hazardous or flammable materials, or uses similar to junkyards, landfills or quarries.
9	Community Form: Goal 2	**1.** Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The site is located on the edge of an existing activity center.
10	Community Form: Goal 2	**4.** Allow non-residential development within the Neighborhood, Traditional Neighborhood and Village Form Districts to occur only at locations with appropriate access and connectivity.	✓	The site has appropriate access and connectivity.
11	Community Form: Goal 2	**5.** Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The site is located along Lyndon Lane, a commercial corridor and minor arterial at this location. The site is located on the edge of an existing activity center.
12	Community Form: Goal 2	**6.** Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposed zoning district would permit a more compact pattern of development in an activity center.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
13	Community Form: Goal 2	**7.** Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposed zoning district would permit a mixture of compatible land uses in an existing center.
14	Community Form: Goal 2	**8.** Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	The proposed zoning district would permit residential uses above retail.
15	Community Form: Goal 2	**9.** Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would provide new development providing commercial uses.
16	Community Form: Goal 2	**10.** Encourage outlot development in underutilized parking lots of existing development to promote utilization of existing infrastructure provided specific criteria for elements such as location, scale, signs, parking, lighting, and landscaping are met. Outlot development shall encourage street-level retail with residential units above.	✓	No underutilized parking lots are proposed.
17	Community Form: Goal 2	**11.** Ensure appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences.	✓	The site is located on the edge of an existing activity center.
18	Community Form: Goal 3	**9.** Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	No natural features are evident on the site.
19	Community Form: Goal 3	**10.** Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
20	Community Form: Goal 3	**11.** Encourage land uses within the Ohio River Corridor that are appropriate for and related to river corridor activities and that are consistent with the goals and objectives of the Ohio River Corridor Master Plan. Reserve appropriate riverfront sites such as the Upper River Road industrial area for river-related development. Allow development of commercial leisure businesses related to the river, such as boating services and restaurants in appropriate locations. Encourage new development in the Ohio River corridor and along key greenway and street connections to provide for public access in new riverfront development and to maintain views of the river from public rights-of-way.	NA	The site is not located in the Ohio River Corridor.
21	Community Form: Goal 3	**12.** When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	NA	The site is not located in the floodplain.
22	Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	NA	No historic assets are evident on the site.
23	Community Form: Goal 4	**2.** Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	NA	No distinctive cultural features are evident on the site.
24	Mobility: Goal 1	**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 site is located on the edge of an existing activity center at the intersection of Lyndon Lane and La Grange Road.
25	Mobility: Goal 2	**4.** Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access to the site is via Lyndon Lane, a minor arterial at this location.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
26	Mobility: Goal 3	**1.** Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposed zoning district would permit a mix of complementary neighborhood serving businesses and services in an existing center.
27	Mobility: Goal 3	**2.** To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities.
28	Mobility: Goal 3	**3.** Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The proposal would permit higher-density mixed-use developments that reduce the need for multiple automobile trips.
29	Mobility: Goal 3	**4.** Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following: **4.1.** nodal connections identified by Move Louisville; **4.2.** impact on freight routes; **4.3.** time of operation of facilities; **4.4.** safety; **4.5.** appropriate linkages between neighborhoods and employment; and **4.6.** the potential for reducing travel times and vehicle miles traveled.	✓	Transportation Planning has approved the proposal.
30	Mobility: Goal 3	**5.** Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	Transportation Planning has approved the proposal.
31	Mobility: Goal 3	**6.** Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Transportation Planning has approved the proposal.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
32	Mobility: Goal 3	**9.** When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	Transportation Planning has approved the proposal.
33	Mobility: Goal 3	**10.** Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Transportation Planning has approved the proposal.
34	Community Facilities: Goal 2	**1.** Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The relevant utilities have approved the proposal.
35	Community Facilities: Goal 2	**2.** Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	Louisville Water Company has approved the proposal.
36	Community Facilities: Goal 2	**3.** Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has approved the proposal.
37	Economic Development: Goal 1	**2.** Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	NA	The proposal is not for industrial zoning.
38	Economic Development: Goal 1	**3.** Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	The site is located on Lyndon Lane, a minor arterial at this location.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
39	Economic Development: Goal 1	**4.** Utilize industrial sites near the airport and the Ohio River to support the growth and development of uses whose infrastructure and production needs require such a location or for land uses that support airport-oriented or river-oriented industrial uses.	NA	The proposal is not for industrial zoning. The site is not located near the airport or the Ohio River.
40	Economic Development: Goal 1	**5.** Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	NA	The proposal is not for industrial zoning.
41	Livability: Goal 1	**17.** Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	No karst features are evident on the site.
42	Livability: Goal 1	**21.** Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	NA	The site is not located in the floodplain.
43	Livability: Goal 1	**24.** Ensure, to the extent feasible, that critical facilities and those that store or use hazardous wastes are located outside the regulatory floodplain. Where essential community facilities must be located within a floodplain (e.g., pumping stations), ensure that these facilities are designed, located and operated in a manner that minimizes loss of services during flood events as well as limits, to the extent possible, floodplain disturbance.	NA	The site is not located in the floodplain.
44	Housing: Goal 1	**2.** Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposed zoning district would support aging in place by permitting additional commercial options at the edge of an existing centr.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
45	Housing: Goal 2	**1.** Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposed zoning district would permit inter-generational mixed-income and mixed-use development.
46	Housing: Goal 2	**2.** Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The proposal would permit housing to be in proximity to an activity center.
47	Housing: Goal 3	**2.** As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No existing residents will be displaced by the proposal.
48	Housing: Goal 3	**3.** Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The proposed zoning district would permit innovative methods of housing.

4. Existing Binding Elements

~~1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission and to the City of Lyndon for review and approval; any changes/additions/alterations not so referred shall not be valid.~~

~~2. There shall be no medical office or other uses requiring a parking ratio greater than one space per 400 square feet of floor area unless the applicant, property owner, or developer provides documentation for the DPDS file that parking can meet the requirement of the proposed use.~~

~~3. The development shall not exceed 26,400 square feet of gross floor area for office use, 19,284 square feet of retail and 4,300 square feet of restaurant.~~

~~4. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan/sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than five feet to front property line. The sign shall not exceed 26 square feet in area per side and 4 feet in height. No sign shall have more than two sides.~~

~~5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~